Presentation copy

To

I am Clarence Stephens

this volume

is presented with his

most affectionate regards

by

Alexander H. Stephens

Liberty Hall

Crawfordville Ga.

16. July 1872

THE

REVIEWERS REVIEWED;

A SUPPLEMENT TO THE "WAR BETWEEN THE STATES," ETC.,

WITH

AN APPENDIX IN REVIEW OF "RECONSTRUCTION," SO CALLED.

BY

ALEXANDER H. STEPHENS.

NEW YORK:
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1872.

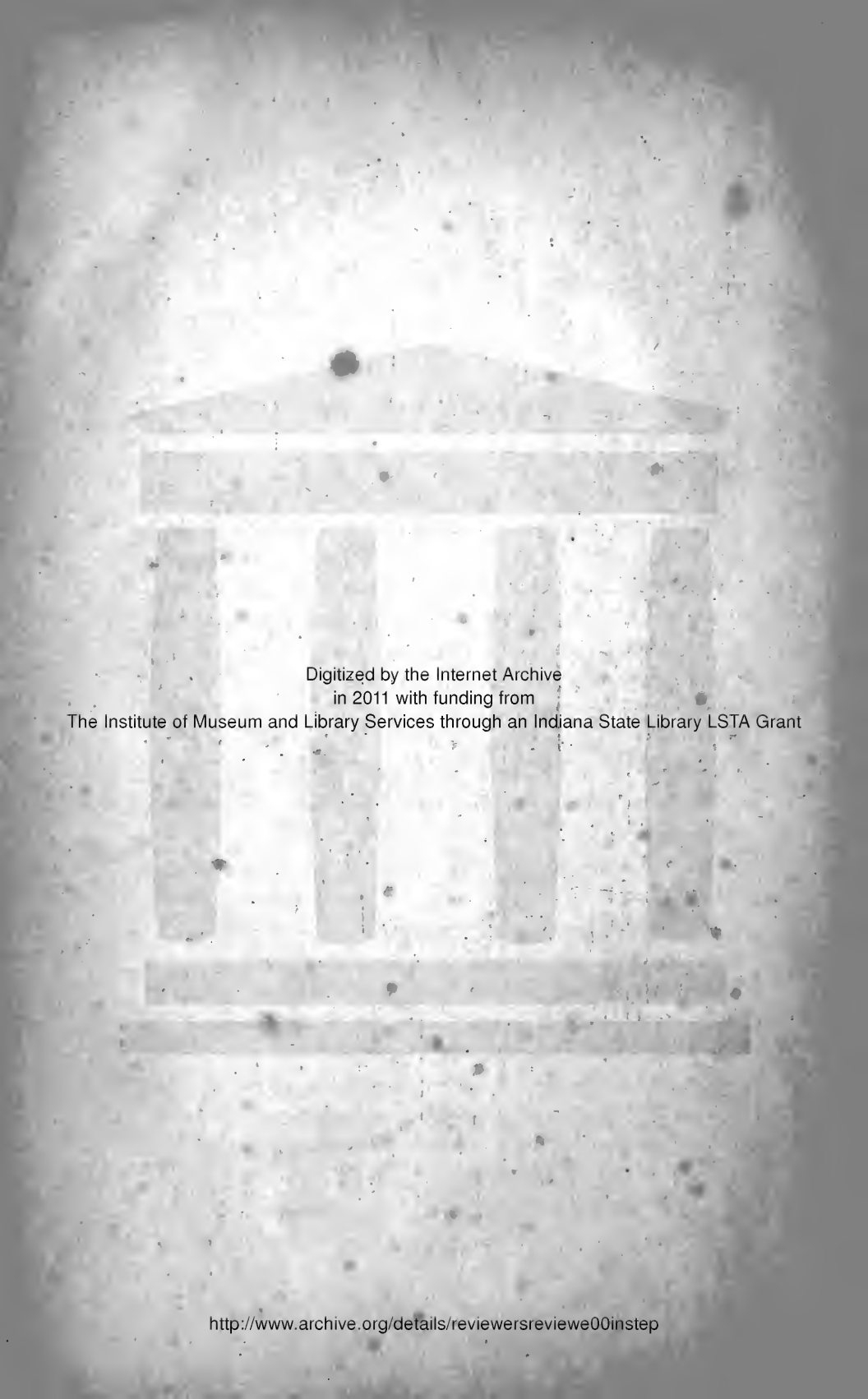
TO

ADAM L. ALEXANDER,

The only survivor of my early benefactors, a gentleman distinguished for integrity, piety, urbanity, and high culture, in all that pertains to Art, Science, and Literature, this volume is most respectfully and gratefully inscribed, with a fervent wish that his days may yet be continued for many years to come, in the enjoyment of that "otium cum dignitate" *which always imparts a hallowing charm to the crowning glory of a long, happy, prosperous, and well-spent life.*

ALEXANDER H. STEPHENS.

LIBERTY HALL, CRAWFORDVILLE, GA.,
January 1, 1872.



PREFACE.

The two volumes of the "Constitutional View of the Late War Between the States," etc., have been before the public nearly two years. The object of the writer of that work was, with perfect impartiality, and without any of the bias or prejudice which usually accompanies passion, from any cause whatever, to vindicate the truth of history, that posterity may have a clear perception and understanding of those principles of Local Self-Government, and of Federative Union, upon which the Free Institutions of the United States were founded and established by the Fathers; and upon the maintenance of which alone he believes these Institutions can be preserved and perpetuated.

Since the publication of the work, he has closely watched the criticisms which have been made upon it from all quarters, to see to what extent any attempt would be made to assail the facts therein set forth, or the positions therein assumed. He did not expect that a work so directly at issue, in matters of public record, with the current histories of the day, would escape criticism and assault. In this he has not been disappointed. Attacks have been made from several high quarters.

It is his object, in this volume, to give to the public of the present generation, and to leave for all coming generations, in an induring form, his answer to each one of these attacks which have come to his notice from a source deserving attention.

Each assailant has been treated separately and dealt fairly by, as the author believes. Whatever opinion may be entertained as to results, it is not thought by him that any one will venture to say, that the adversary or objector in any of the several cases has not been squarely met, and upon his own grounds.

It is, therefore, left for an enlightened and just public, now and hereafter, to determine whether any successful assault has as yet been made upon what are claimed in the work to be irrefutable truths and irresistible conclusions. It is also left for the same public to determine whether the doctrines of the two volumes, as therein set forth, and herein maintained, are in accordance with the essential principles of Public Liberty taught by the Founders of our Federal Republic, or are of a character so "*pernicious*" that they should be "*suppressed*," according to the public announcement of Mr. Attorney-General Ackerman.

"*Audi alteram partem.*"
"*Prove all things; hold fast that which is good.*"

These are maxims which, throughout these discussions, have governed the action of the

AUTHOR.

CONTENTS.

ARTICLE VI.

ARTICLE VII.

ARTICLE VIII.

ARTICLE IX.

ARTICLE X.

APPENDIX.

THE REVIEWERS REVIEWED.

ARTICLE I.

MR. STEPHENS' REVIEW OF DR. A. T. BLEDSOE'S REVIEW OF THE "WAR BETWEEN THE STATES," ETC.

LIBERTY HALL,
CRAWFORDVILLE, GEORGIA, *October* 22, 1868.

Messrs. Editors of the Statesman, Baltimore, Maryland:

GENTLEMEN:—In the *Leader* of the third instant (which journal has since been merged into yours), there is an article of a character to justify some notice from me; otherwise, silence might be construed into assent. The subject is of too much importance, not to me personally, but to the public interests involved in the questions, for me to allow such an inference to be drawn.

The article alluded to is the one under the head of *Book Notices*. In this, after referring to *The Southern Review* for October of this year, and the high merits of that Quarterly, etc., special attention is called to the paper entitled "Alexander H. Stephens on the War," and it then goes to say:

"The writer accuses Mr. Stephens of book-making, and cites the great amount of irrelevant matter which encumbers the volume. He shows the inconsistency of complaining of the want of space, and at the same time crowding his pages with such documents as the Declaration of Independence, the Articles of Confederation, the Constitution of the United States, etc., and with almost entire Congressional and other speeches. He condemns also the cold-bloodedness with which he charges the history is written, and insists that the true historian of a passionate period must have passion enough to enable him to sympathize with the fierce

energies he records. He denies that the protracted struggle through which we have just passed arose from a mere conflict of political ideas, and shows that that conflict existed from the foundation of the government. The Reviewer insists, on the contrary, that the revolution was the product of a 'multitude of converging causes,' such as the destruction of the balance of power, sectional legislation, formation of a geographical faction, the disregard of the checks of the Constitution, the unfair treatment of the slavery question, and the violent tone with which the question of Secession was discussed at the North. He also convicts Mr. Stephens, by citation from his own speeches, of inconsistency on the subject of Secession, showing that the North did not misrepresent him when it quoted him as an opponent of that method of righting the wrongs of the South. He also draws a very clear distinction between the right of Revolution and that of Secession, as entirely distinct, though Mr. Stephens has confounded them."

From this it appears, that the author of this article in the *Leader* is of opinion that I, in the first volume of the "*Constitutional View of the Late War*," etc., had confounded the right of Secession with the right of Revolution, while the Reviewer referred to has drawn a very clear distinction between the two; and, moreover, that the Reviewer, besides several other rather extraordinary feats, has actually convicted me of inconsistency upon the subject of the right of Secession, and that, too, most strangely, by *showing that the North did not misrepresent me when it quoted me as an opponent of that method of righting the wrongs of the South.* This is the judgment he has given to the world. Whether it is founded barely upon the *ex parte* statement of the Reviewer, and his pretended extracts from the book and speeches referred to, or upon a full investigation and examination, by himself, of the facts and merits of the points made by the Reviewer, does not appear. But, be that as it may, I very respectfully appeal from that judgment, and ask the privilege, through the columns of the *Statesman*, the successor of the *Leader*, to present these facts and points to your readers; that the whole case, with its merits, on both sides, may be properly submitted to the decision of a higher tribunal.

That Dr. Bledsoe, the Editor of *The Southern Review* (who, I take it for granted, is the writer), did, in the paper

referred to, put forth the utmost of his powers in an endeavor to convict me of an inconsistency upon the subject of Secession, is quite apparent from his very labored effort. Indeed, his whole review of the book, which he had before him, is manifestly directed much more against the author than against the book itself, or the doctrines and principles it maintains. At the outset, it is true, there is something about it, and "the mysterious Company" by which it is issued, that he does not like. But, as he advances, it appears to him to have some of the merits of "a real book." "The one living element, the one vital principle, which constitutes it a real book," says he, "is the great and imperishable truth, that the Government of the United States was Federal, and not National, in its origin." "This great truth is, we think, fully and unanswerably established by Mr. Stephens." (Page 280.) In the same mood, in another place, he says:—"We hail it, then, as a real thing, as a veritable luminary in the political heavens. Not as a star of the first magnitude, however," etc. (Page 254.) In his varying fancy, this "veritable luminary" soon becomes nothing but "a comet" with "an immense train," etc.

Then, suddenly, as if under the baleful influence of a real comet (which, according to the opinions of many, less imaginative than this learned Doctor of Laws, is, always, a portent of evil, scattering disorders, pestilence, and wars among mankind, in its course), he seems to lose his self-possession, and bursts forth into a furious rage, turning upon the author, assailing his want of passion, or *cold-bloodedness*, and his various other short-comings, fancied pretensions, and inconsistencies. In this line of criticism, more evidences of *hot-bloodedness* and indiscretion, which usually go together in writing, as in all things else, are rarely to be found compressed in a like number of fifty-one pages, than this self-same *Review* contains. With all this sort of personal tirade, of course, it is not my purpose now, or at any time, to trouble you or annoy your readers, further than is absolutely necessary to my own vindication against his perversions, and the judgment thus rendered on them. My object in this notice is to deal mainly with the facts of the case involved in the *Leader's* presentation of the

merits of the paper in question, and for the purpose, mainly, of correcting some of the numerous misrepresentations, with which this article of *The Southern Review* abounds, on the points embraced in that presentation.

In the prosecution of this design, allow me, then, in the first place, upon the subject of inconsistency on the subject of Secession, to say that Dr. Bledsoe does not attempt to accomplish his object, in this particular, in the manner, and on the point, as stated in the *Leader*. He makes no citations from my speeches to show that I was not misrepresented at the North, when I was quoted as being an opponent of *that method* of righting the wrongs of the South. This was more than even he attempted. Nothing connected with my public life is more generally known North as well as South, than that I *did oppose that method* of redressing what I considered great wrongs to the Southern States of the Union.

His object was to convict me of inconsistency upon the *right* of a State to adopt *this mode* of redress, if she, in her sovereign character, chose to adopt it. The argument of the book maintains this right, and vindicates the justifiableness of the measure as matter of *sovereign right*, though as matter of *public policy* it might have been injudicious, and unwise, as I held it to be at the time. Many things may be legally and morally right in themselves, which, nevertheless, may not be either wise or expedient in public as well as in private affairs. This is the doctrine of the book on this question, and Dr. Bledsoe quotes from the report of a speech made by me, 14th November, 1860 (known as my "Union Speech"), to show that I did not *then* believe in this *sovereign right* of Secession; but, on the contrary, *denied it!* This is the inconsistency that he endeavored to show, and which he claims that he has established. He maintains that I *denied* this right in that speech. I maintain that I did not, but fully recognized the same principles in it, on this question, which are set forth in the book. This is the issue between us.

To enable that tribunal, to which I appeal, more clearly and fully to understand the merits of both sides, it is proper that the principles set forth in the "*Constitutional View of*

the Late War between the States," etc., on this subject, should first be presented. These are as follows:

"Now, as to the *rightfulness* of the State thus resuming her sovereign powers. In doing it she *seceded* from that Union, to which, in the language of Mr. Jefferson, as well as General Washington, she had *acceded* as a sovereign State. She repealed her ordinance by which she ratified and agreed to the Constitution and became a party to the Compact under it. She declared herself no longer bound by that Compact, and dissolved her alliance with the other parties to it. The Constitution of the United States, and the laws passed in pursuance of it, were no longer the supreme law of the people of Georgia, any more than the treaty with France was the supreme law of both countries after its abrogation, in 1798, by the same rightful authority which had made it in the beginning. In answer to your question, whether she could do this without a breach of her solemn obligations, under the Compact, I give this full and direct answer: She had a perfect right so to do, subject to no authority but the great moral law which governs the intercourse between Independent Sovereign Powers, Peoples, or Nations. Her action was subject to the authority of that law, and none other. It is the inherent right of Nations, subject to this law alone, to disregard the obligations of Compacts of all sorts, by declaring themselves no longer bound in any way by them. This, by universal consent, may be rightfully done when there has been a breach of the Compact by the other party or parties. It was on this principle that the United States abrogated their treaty with France, in 1798. The justifiableness of the act depends, in every instance, upon the circumstances of the case. The general rule is, if all the other States—the parties to the Confederation—faithfully comply with their obligations, under the Compact of Union, no State would be morally justified in withdrawing from a Union so formed, unless it were necessary for her own preservation. Self-preservation is the first law of nature, with States or Nations, as it is with individuals.

"But in this case the breach of plighted faith was not on the part of Georgia, or those States which withdrew, or attempted to withdraw, from the Union. Thirteen of their Confederates had openly and avowedly disregarded their obligations under that clause of the Constitution which covenanted for the rendition of fugitives from service, to say nothing of the acts of several of them, in a like open and palpable breach of faith, in the matter of the rendition of fugitives from justice. These are facts about which there can be no dispute. Then, by universal law, as recognized by all Nations, savage as well as civilized, the Compact, thus broken by some of the parties, was no longer binding upon the others. The breach was not made by the Seceding States. Under the circumstances, *and the facts* of this case, therefore, the legal as well as moral right, on

the part of Georgia, according to the laws of Nations and nature, to declare herself no longer bound by the Compact, and to withdraw from the Union under it, was perfect and complete. These principles are too incontestably established to be questioned, much less denied, in the forum of reason and justice."—(*Constitutional View*, etc., vol. i., page 495.)

Such are the doctrines and principles set forth in the book upon the subject of the *Right of Secession*. These, Dr. Bledsoe asserts, are inconsistent with the principles and doctrines held by me in the speech referred to. To sustain his side of this issue, he quotes, or pretends to quote, from that speech. After producing a part of it, he says:

"Now here, without the least reference to the mode of Secession, it is broadly and plainly asserted that 'Secession would be a violation of that sacred instrument, the Constitution, which so many of his hearers had sworn to support.' If this does not deny the Constitutional right of Secession, then may we despair of ever arriving at the real import of the plainest possible modes of expression."—(Page 275 of *Review*.)

In reply to this your readers may be surprised to be informed that no such expression, as quoted by Dr. Bledsoe, is to be found in the speech to which he refers, from the beginning to the end of it. It is a distorted fabrication. It is but the figment of his own disordered imagination: the creation of that fierce passion with which he seems to think critical reviews, as well as histories, should be written. The speech from which he pretends to quote, as is well known, was an earnest remonstrance before the Legislature of Georgia against Secession, for any of the grievances then complained of. All these were discussed in order. Some of them I did not think sufficient to justify the exercise of this right. On these the Doctor fully admits I had the best of the argument (page 266 of *Review*). Others I did believe to be sufficient, as will be seen; though even for a redress of them, I advised the adoption of another, and which I thought a better, line of policy. That speech, moreover, it may be here stated for the information of those who have not seen the volume in which it is published, and from which the Doctor quotes, was entirely extemporary. It stands in the words of a reporter, with only a hurried revision by me. That part of it, as it thus stands,

including what was reproduced by him, and from which this expression attributed to me is manufactured, is in these words:

"The first question that presents itself is: Shall the people of the South secede from the Union in consequence of the election of Mr. Lincoln to the Presidency of the United States? My countrymen, I tell you frankly, candidly, and earnestly, that I do not think that they ought. In my judgment, the election of no man, constitutionally chosen to that high office, is sufficient cause for any State to separate from the Union. It ought to stand by and aid still in maintaining the Constitution of the country. To make a point of resistance to the Government, to withdraw from it because a man has been constitutionally elected, puts us in the wrong. We are pledged to maintain the Constitution. Many of us have sworn to support it. Can we, therefore, for the mere election of a man to the Presidency, and that, too, in accordance with the prescribed forms of the Constitution, make a point of resistance to the Government without becoming the breakers of that sacred instrument ourselves, by withdrawing ourselves from it? Would we not be in the wrong? Whatever fate is to befall this country, let it never be laid to the charge of the people of the South, and especially to the people of Georgia, that we were untrue to our national engagements."

All this refers, as clearly appears, *especially* and *exclusively* to the election of Mr. Lincoln, as a sufficient cause to justify Secession. The opinion was given that his election, or the *bare* election of *any man*, constitutionally chosen, however dangerous the principles he might entertain, was not, in my individual judgment, sufficient cause to justify it. But is there any thing in the whole extract which looks any thing like the *broad, unqualified denial* of the right which Dr. Bledsoe puts in my mouth? If there be not the *least reference* here to the *mode* of Secession, is there not a much more pertinent and special reference to a *particular cause* that would *not* justify it? Is there any thing here like a *denial* that *any cause* would justify Secession or the withdrawal of a State from the Union? or like the assertion that *no cause* would justify such action? Is not the inference clearly the other way? That some other cause or causes might?

But the matter is not left to inference only. It is put beyond doubt or cavil, as I maintain, in the after part of the same speech, which Dr. Bledsoe had before him. As the

greater part of his, as well as your readers, perhaps, have never seen the whole of the speech, I therefore submit for their consideration, on the points at issue between us, the following additional extracts:

"But it is said that Mr. Lincoln's policy and principles are against the Constitution, and that, if he carries them out, it will be destructive of our rights! Let us not anticipate a threatened evil! If he violates the Constitution, then will come our time to act."

Again, after going through with all the other grievances complained of, I proceeded as follows (the parts are now italicized for special notice):

"Now, upon another point, and that the most difficult, and deserving your most serious consideration, I will speak! That is, the course which this State should pursue toward these Northern States which, by their legislative acts, have attempted to nullify the fugitive slave law. . . . Northern States, on entering into the *Federal Compact*, pledged themselves to surrender such fugitives; and it is in disregard of their constitutional obligations that they have passed laws which even tend to hinder or inhibit the fulfilment of that obligation. They *have violated their plighted faith!* What ought we to do in view of this? That is the question. What is to be done? By the *law of Nations* you would have a right to demand the carrying out of this article of agreement, and *I do not see that it should be otherwise with respect to the States of this Union. . . . The States of this Union stand upon the same footing*" [toward each other, of course] "*with foreign nations in this respect.* . . . Suppose it were Great Britain that had violated some compact of agreement with the General Government—what would be first done? In that case our Minister would be directed, in the first instance, to bring the matter to the attention of that Government, or a Commissioner be sent to that country to open negotiations with her, ask for redress, and it would only be after argument and reason had been exhausted in vain that we would take the last resort of Nations. That would be the course toward a Foreign Government, *and toward a member of this Confederacy I would recommend the same course.* Let us not, therefore, act hastily or ill-temperedly in this matter. Let your Committee on the State of the Republic make out a bill of grievances; let it be sent by the Governor to those *faithless States;* and if reason and argument shall be tried in vain—if all shall fail to induce them to return to their constitutional obligations—*I would be for retaliatory measures*, such as the Governor has suggested to you. This mode of resistance in the Union is in our power. *It might be effectual, and if* [*not*], in the last resort we would be justified in the eyes of Nations, not only

in separating from them, but by using force. . . . At least, let these offending and derelict States know what your grievances are, and if they refuse, as I said, to give us our rights under the Constitution, I should be willing, as a last resort, to *sever the ties* of our Union with them. My own opinion is, that if this course be pursued, and they are informed of the consequences of refusal, these States will recede, will repeal their nullifying acts; but if they should not, then let the consequences be with them, and the responsibility of the consequences rest upon them. . . . Now, then, my recommendation to you would be this: In view of all these questions of difficulty, let *a Convention of the people of Georgia* be called, to which they may be all referred. Let the *sovereignty* of the people speak. Some think that the election of Mr. Lincoln is cause sufficient to dissolve the Union. Some think those other grievances are sufficient to dissolve the same, and that the Legislature has the power thus to act. I have no hesitancy in saying that the Legislature is not *the proper body to sever our Federal relations, if that necessity should arise.* . . . Sovereignty is not in the Legislature! We, the people, are Sovereign! I am one of them, and have a right to be heard, and so has every other citizen of the State. You legislators—I speak it respectfully—are but our servants! You are the servants of the people, and not their masters! Power resides with the people in this country. . . . This principle of popular sovereignty, however much derided lately, is the foundation of our Institutions. Constitutions are but the channels through which the popular will may be expressed. *Our Constitution came from the people. They made it, and they alone can rightfully unmake it.* . . . I am for presenting the question fairly to the people, by calling together an untrammelled Convention, and presenting all the questions to them—whether *they will go out of the Union*, or what cause of resistance in the Union they may think best—and then let the Legislature act, when *the people in their majesty are heard.* . . . Now, when this Convention assembles, if it shall be called, as I hope it may, I would say, in my judgment, without dictation, for I am conferring with you freely and frankly, and it is thus that I give my views—it should take into consideration all those questions which distract the public mind; *should view all* the grounds of Secession, etc. . . . Another thing I would have that Convention to do: Reaffirm the Georgia platform with an additional plank in it. Let that plank be the fulfilment of these constitutional obligations on the part of those States—their repeal of these obnoxious laws as *the condition of our remaining in the Union.* . . . Should Georgia determine to go out of the Union, I speak for one, though my views might not agree with them, whatever the result may be, I shall bow to the will of her people."

Is there any thing in this speech, as appears from any of these extracts, taken singly or collectively, inconsistent with

the doctrines and principles set forth in the book? Is not the great *Sovereign Right of Secession* as clearly admitted and recognized in the speech, under the same principles of the laws of Nations, as it is more elaborately argued and set forth in the book? It is not admitted in the one, nor set forth in the other, either as a *Constitutional* right or a *Revolutionary* right. There is no such nonsense in the speech, or in the book. It has ever been held by me, on all occasions, as a *Sovereign Right.* All the confusion on this subject is with the Doctor himself. It was not by virtue of the Constitution that this right was to be exercised, but by virtue of that Sovereignty of the State by which the Constitutional Compact was entered into by her. The doctrine of the book on this point is as follows:

"This right of a State to consider herself no longer bound by a Compact which, in her judgment, has been broken by her Confederates, and to secede from a Union, formed as ours was, has nothing about it either new or novel. It is incident to all Federal Republics. It is not derived from the Compact itself. It does not spring from it at all. It is derived from the same source that the right is derived to abrogate a treaty by either or any of the parties to it. That is seldom set forth in the treaty itself, and yet it exists, whether it be set forth or not. So in any Federal Compact whatever, the parties may or may not expressly provide for breaches of it. But where no such provision is made the right exists by the same laws of Nations which govern in all matters of treaties or conventions between Sovereigns."—(Vol. i., *Con. View*, p. 500.)

These are the principles in which I was educated. From the time that I entered public life, and even before, I held the same, as the records can abundantly establish. However profoundly ignorant the Doctor confesses himself to have been upon the subject when he was "an old line Whig" (page 270, *S. R.*), he should not take it for granted that all others were as uninformed as himself. He is, according to his own acknowledgment, even now but a neophyte. This may account for his seeing, as yet, the great truth so dimly.

He seems really to think, because I did not say much about this right of Secession until I reached the latter part of the volume, that I did not know what I was about, and that what

is there said was but an "after-thought." One would suppose that he had filled the chair of Mathematics in the University of Virginia long enough to have *learned*, that conclusions are logical results reached after a regular process of reasoning, and that they are seldom stated, by those who are masters of the problem in hand, until they are reached. This is the regular order of demonstration. This was the order pursued by me in establishing what, notwithstanding all his carping, this ex-professor himself admits to be an "imperishable truth!"

The real gravamen, however, of the Doctor, may perhaps be, that I did not follow him in presenting the "numerous and converging causes" or grounds of Secession which he had set forth in the *Southern Quarterly* (pages 264–65, *S. Review*), such as the destruction of the balance of power, sectional legislation, formation of a geographical faction, the disregard of the checks of the Constitution, the unfair treatment of the slavery question, and the violent tone with which the question of Secession was discussed at the North—as he sets them forth. Upon a more careful and dispassionate reading of the "Constitutional View of the War between the States," however, he may find several of these topics very fully treated of in its pages. If some of them are entirely omitted, such as his leading one, to wit: "Firstly, the destruction of the balance of power which was originally established between the North and the South, and which was deemed by the authors of the Constitution to be essential to the freedom, safety, and happiness, of those sections of the Union" (page 264 of *Review*), it may be some relief to him to be informed that this was omitted simply because it has no fact in history to rest upon. I was writing for the informed as well as the uninformed—for the present as well as the future—and had some respect for my own character, as well as a proper devotion to the truth. There was no balance of power established between the North and the South, as sections, in the Constitution. The only balance of power established in that Compact in this respect, which was deemed by the authors of it to be essential to the freedom, safety, and happiness, of each and all the States, was the equality of the States, the reserved Sovereignty of the States,

and the equal representation of their sovereignty in the Congress of States. Had I made such a statement as the Doctor has ventured to announce, I certainly should not have appended a copy of the Constitution to the work. For if I had, it would have been a complete refutation of the text. No wonder he complains so lustily at these everlasting *proofs*, by which the positions in the book are fortified in the accompanying appendix. So with the rest of his omitted grounds. "The violent tone with which the question of Secession was discussed at the North," I did not think a sufficient cause for Secession, and therefore omitted it, though the Doctor may have announced it as a proper one some time before. So of the bare "formation of a geographical faction."

But that the "unfair treatment of the slavery question," when it amounted to a breach of the Federal Compact, on the part of several of the Northern States, did fully justify Secession, is certainly very fully discussed, if not clearly established, in the book. Were it anybody else but Dr. Bledsoe who makes this statement, it would be a matter of wonder that this should be placed among the omitted grounds.

But still, in his opinion, I did not "grapple" sufficiently with the subject; did not sufficiently comprehend its height, length, depth, and breadth; did not show causes enough! The *one* great cause, the violation of the fundamental principle of the Federal system, as set forth in the book, was not sufficient for such stupendous results! Indeed, he says, that Thucydides, two thousand years ago, in assigning the causes for the Peloponnesian war, came nearer the mark, in assigning the causes of our war, than I have come. This author he allows to be a "truly philosophic historian," and he pretends to quote what he said were the causes of the great Grecian Twenty-seven Years' War; but he is as unfortunate in his quotation from Thucydides as he is from me. Read what he says:

"Mr. Stephens attempts to describe what has passed before his eyes, and to assign its 'real causes.' Yet, by a truly 'philosophic historian' was the thing infinitely better done more than two thousand years before the events of the late war happened. We allude, of course, to Thucydides."

who, in his history of the Peloponnesian War, says: 'And the cause of all these things was power pursued for the gratification of avarice, and the consequent violence of parties when once engaged in the contest.' Thus, in his account of the memorable war in which 'Greek met Greek,' is the cause of the late war depicted, with an insight far more profound, and an accuracy far more perfect, than it is in the history of Mr. Stephens."—(Page 283, *Review*.)

Now, I was not writing a History of our late war. I was only giving a Constitutional View of its causes, character, conduct, and results.

But Thucydides assigned no such cause as that stated for the outbreak of the Peloponnesian War, of which he is the great historian. The *one* great cause which he assigned for that war, and from which all its evils, sufferings, and demoralization sprung, was "the breaking the thirty-years' truce after the taking of Eubœa."—(See *Thucydides*, Book 1, sec. 23.)

In what the Doctor quotes, the historian is speaking only of the evils of dissensions and factions, which first arose in Corcyra, and afterward spread through all Greece during the continuance of the war. His exact language on the subject of these dissensions, and not the *causes* of the war (which is, as usual with the Doctor, misquoted), is as follows:

"Now, the cause of all these things was power pursued for the gratification of *covetousness* and *ambition* [italics mine], and the consequent violence of parties when once engaged in *contention*. For the leaders in the cities, having a specious profession on each side, putting forward, respectively, the political equality of the people, or a moderate aristocracy, while in word they served the common interests—in truth, they made them their prizes."—(*Thucydides*, Book 3, sec. 82.)

This reference to Thucydides was very unfortunate for the Doctor, in several respects. He not only misquotes him, and then misapplies what he attempts to quote, but directs attention to the highest authority against himself, on the very points he was making on me, in this violent outburst of temper. He is answered by his own authority. Thucydides assigned but one cause for the Great War between the Grecian States. This was the breach of the thirty-years' truce. "As for the reason why they broke it" he gives the grounds of complaints at large,

on both sides, and with such dispassionate impartiality—'*cold-bloodedness*,' if you please—that no one, unless otherwise informed, could come to any correct opinion as to his own position in the contest, or on which side he stood, though he was actually an active and zealous participant in the scenes he describes.

If he, then, assigned but one leading cause for this great war, which was the true one, and could treat of it, after taking the part he did in it, with such *cold-bloodedness* as he did—writing it, as he said, "not as a prize-task to listen to at the present moment," but as "a possession forever" (as it is likely to prove to be with the test of two thousand years)—does not the Doctor himself, by this reference, bring forward an illustrious example in refutation of his positions, in the identical particulars he is so furious upon against me in this case?

From this "truly philosophic historian" the Doctor might learn some other useful lessons upon the subject of *passion*, even in war! For instance, in book 1, section 122, he would see it stated that "war, least of all things, proceeds on definite principles, but adopts most of its contrivances from itself, to suit the occasion; in the course of which he that deals with it with good temper is more secure; while he that engages in it with passion makes the greater failure." Had the Doctor, and those associated with him in the War Department at Richmond, during our late struggle, been governed more by calm good sense, and less by mere fierce and fiery passion and personal prejudices (such as he still exhibits), our present condition might have been infinitely better than it is!

But let us proceed to look at some other of his points of inconsistency. First, at the complaint of the want of space, while the book is loaded with so much surplus matter! Out of the 654 pages of the volume, one hundred and four of them (he has counted them) are taken up, he says, with cumbrous documents, such as the Declaration of Independence, Constitution of the United States, the Kentucky Resolutions of 1798, the Virginia Resolutions of '98–'99, and Mr. Madison's report thereon—documents which, he says, are in every gentleman's library. He has them in at least a dozen volumes, etc. (p. 251,

Review). Now, by far the longest of these documents is Mr. Madison's Report of 1799 on the Virginia Resolutions of 1798. If the Doctor possesses this in even a *half* dozen other volumes, or even the half of that, he is much luckier than I am; and I believe I have quite as large a miscellaneous library as most country gentlemen. So far from its being on every book-shelf in America, I will venture the opinion against his that it cannot be found on one in a hundred thousand of the book-shelves in America. I never saw but three copies of this Report before its republication in this volume. One is an *old pamphlet* copy in my possession, one is in the supplement to the 33d volume of Niles' Register, and the other in the 4th volume of Elliot's Debates. If the Doctor is fortunate enough to possess these two very rare works, he has two copies, among the numerous volumes on his shelves, but I doubt if one in a thousand of his readers ever saw a copy of it, or knew where to obtain it. I very much question if he himself ever saw a copy of it before in his life, as his article has strong internal evidence that he never had read it up to the time his article was written. In 1861, while he was *bogging* about in search of knowledge upon the nature of the Government, "when the tremendous shock" of the warring elements which underlay the foundation of its whole superstructure came so suddenly and alarmingly upon him, if he had blundered upon Niles' Register, or some kind friend had been able to turn him to a copy of Elliot, and he had then read and studied *this report*, he might have found that light which he so eagerly sought for, but failed to obtain, in the speech of Mr. Benjamin! (p. 269, *Review*). Perhaps, if he will *yet* read it, he will see its great *relevancy* and essential *pertinency* to the questions discussed in the volume he had under review, as well as the like relevancy of the speeches of Holcombe and Toombs. Upon a more careful reading he may also see the pertinency and *great* relevancy of the reproduction of the time-honored Declaration of Independence, with quite enough "scraps of brains" (page 251, *Review*) in the Text to show this relevancy. Upon examining this copy thus reproduced—taken from "the bowels of Elliot's Debates"—he may see that its differs, *in its Title*, very essentially from the other

numerous copies of the same Document with which his shelves may be burdened. He will see, if he will look, that the Title, when acted upon by the Congress, was made to conform to their action upon it as a Congress of States. At least it so appears in Elliot. There it stands thus: "In Congress, July 4, 1776. The Unanimous Declaration of the Thirteen United States of America." How it stands on the Journal I do not know, as I have no copy of that; but as it stands in Elliot it was put forth as the Declaration, not of a collective body of men, but the Declaration of States! It was no *Declaration of National Independence*, or the Independence of *one people* as a Nation, but the Independence of Separate States! The use made of it in the argument, and particularly the use made of this striking difference between the Title as it there stands, and the Title of copies usually met with, rendered it altogether proper and essential to the force of the argument, that the *proof* should accompany it. But apart from all this, how many of the thousands of readers for whom the book was intended, ever saw the Declaration at all, or the Articles of the Confederation? And who could properly appreciate or estimate the argument in connection with either without a copy before him?

How, again, does the book compare, in this respect, with others on like or kindred subjects, by authors of character, repute, and distinction?

Dr. Francis Lieber's celebrated volume on "Civil Liberty and Self-Government" consists of 614 pages without counting the index; of these *one hundred and fifty-one* consist of nothing but an appendix of documentary matter, such as Magna Charta, the Petition of Right, the Act of Parliament against Imprisonment for Debt, the Habeas Corpus Act, and, besides various other papers of value referred to in the text, this very same Declaration of the Independence of these States, *but not with the title as it stands in Elliot!* This work was published by J. B. Lippincott & Co., of Philadelphia. Was this an exhibition of "the vice of book-making," either by this noted author or his highly respectable publishers? Wherein is the National Publishing Company less so than the Lippincotts?

Is there a single paper in this most valuable appendix of Dr.

Lieber which a careful reader would not wish to have before him in perusing the text, even if he had the same paper in a dozen other volumes?

Lord Mahon (since Earl of Stanhope) published, not many years ago, an exceedingly interesting history of England, from the "Peace of Utrecht to the Peace of Paris," in 2 volumes. To the first volume, consisting of 567 pages, he has an appendix of 79 pages, very little short of the ratio so querulously complained of by Dr. Bledsoe, in the book he was reviewing. Was Lord Mahon guilty of "the vice of book-making?" or of swelling out his volumes for money, with the hope of effecting sales by a great reputation? Hume, a standard historian, to his first volume of the History of England, consisting of 483 pages, has appendices Nos. 1 and 2, besides notes amounting to 70 pages. Here again the ratio is very little short of that so much complained of by Dr. Bledsoe. Napoleon, the present Emperor of France, has lately published a life of Julius Cæsar, in 2 volumes. The first is out of place in my library; but to the second I see an appendix of 65 pages out of 659. Is he guilty of the "vice of book-making," or writing for means wherewith to live?

But the Doctor complains that so many extracts of speeches are interspersed through the text of the book, and other documentary evidence. This he calls the work of "scissors" "in book-making" (page 250 of *Review*). How would his "truly philosophic historian," Thucydides, pass the scrutiny of such criticism? How much of his work which was to be a "possession forever" is made up entirely of speeches? If the Doctor had criticised Thucydides by *tape*, as he did the Constitutional View, he might have found, perhaps, quite as large a portion of his volume taken up in this way as in the one before him. Were these speeches of Thucydides' own making, or were they correct reports of those that were really made by the persons to whom they are attributed? If the former, then his work is not history, but fiction. We have his word, however, and authority for it, that all of them which he heard are reported as accurately, in substance, as possible; and those that he did not hear are as accurate as he could make them, from reports through

the most authentic sources he could find (*Thucydides*, Book 1, sec. 22). His object, as a true historian, was to have them as accurate in substance as they could be made. On this point, in this country, there is not so much difficulty. Most of the speeches introduced in the "*Constitutional View*," etc., are, moreover, of much higher authority than any bare *ex tempore* addresses, however *accurately* reported. They are the carefully prepared arguments of the principal actors in the passing scenes; and, in giving an accurate and truthful history of the progress of ideas, and the development, as well as the workings of the opposing principles of *our* system of government, they are worth more than all the speculations and word-paintings on the subject that could be produced by the most accomplished masters of rhetoric. They daguerreotype a life-picture, whether with agreeable or hideous features, of the great movement, in each varying phase of its onward progress! To collect, select, and arrange such matters for such a picture is not "the work of scissors" merely! It requires toil and labor, as well as "brains!" Not the irksome toil for "daily bread," either; much less for "filthy lucre;" but that unwearying labor which is prompted and sustained by the soul-inspiring object of exposing error and defending truth! This is the kind of labor I am now performing, and even in this I have found it necessary to make frequent use of "scissors." There is another instrument I am making considerable use of also, and that is a pen. For my purposes these are both essentially necessary; but it requires "brains" to direct either, as well as both, for the accomplishment of the end desired.

So it is in all the business of life, as well as in all the works of art. It is eminently so in all historical productions. In these, he who undertakes to speak, to write, to paint, or to sculpture, must take the materials as he finds them. He cannot create them or change their substance, and in dealing with them he must use instruments at his command. To dig down into the annals of the past; to quarry out the materials of other epochs, where they lie buried in remote and distant strata; to put them in proper shape; to bring them together; to adjust them and to place them in proper position, so as to erect out of

them, with due symmetry and proper proportions, an enduring monument of facts—of indestructible truths—which, in their artistic presentation, shall afford to the world, for the present and the future, a subject of study both agreeable and instructive, necessarily requires *tools* or *implements* of some sort and of various sorts. These it is the function of "brains" to direct; and when the attempt to make such a presentation is successful, be it on stone, or canvas, or on paper, the consummation of the whole is the work of "brains," of genius—it is a "veritable creation!" In "making a book"—accomplishing this object—therefore, "scissors" may be as necessary and as useful as in bare "book-making."

Whether the "*Constitutional View of the Late War between the States*," etc., is an instance of the one or the other, is not for me to say: nor do I mean hereby to express or intimate any opinion, one way or the other, upon that point; but I do mean to reaffirm what is said in the book itself upon the introduction of these documents, and that is, that they bear upon them "the deep *foot-prints* of *truth*, impressed upon our earlier history; which assertion can never obliterate, argument cannot remove, sophistry cannot obscure, time cannot erase, and which even wars can never destroy! However upheaved the foundations of society may be by political convulsions, these will stick to the very fragments of the rocks of our primitive formation, bearing their unerring testimony to the ages to come!" I mean further to affirm that whether such presentation as the one stated above be successfully made in this volume or not, these materials bearing these *foot-prints* here collected, constitute the only materials out of which such presentation, on the subjects whereof it treats, in abler and more skilful hands, can ever be made; and further still, that no one who looks upon them as "*nuisances*" is a proper judge of how true histories or historical views should be composed!

But one of the strange things in this review is that "scissors" did not do enough! More quotations ought to have been made from *The Federalist!* The proof, it is said, that Madison and Hamilton had styled the Constitution a Compact between Sovereign States is to be found in Numbers 39, 40, and 85 of

The Federalist! Webster, it is further said, in his great speech of 1833, had boldly appealed to all contemporary history, to the numbers of *The Federalist*, to the debates in the Convention, to the publications of friends and foes, to sustain him in his position, that the Constitution was not a Compact between States.

"Now," asks Dr. Bledsoe, "how does Mr. Stephens meet this bold, broad, and unscrupulous assertion? Does he go to the history of the times, to *The Federalist*, to the various productions and publications alluded to by Mr. Webster, and show his assertion to be utterly and recklessly false? Does he even show this, in regard to the one great point of his book, that 'the Constitution was a Compact between the States?' He does not. 'The broad assertion' of Mr. Webster, says he, 'doubtless made a deep impression at the time upon those not conversant with the facts, *but it can have no effect upon us who have travelled so carefully through the records of those days.*' But this will not do; we want something more than bare assertion. In questions of such magnitude, the bare assertions of neither Mr. Webster nor of Mr. Stephens will do. We want to see their arguments; especially the arguments of those who have 'travelled so carefully through the records of those days.' What records? Is not *The Federalist* (the only record to which Mr. Webster specifically appeals), worthy of notice? Nay, is not this, beyond all comparison, the most important of all the 'records of those days' which relate to the nature of the Constitution? Most assuredly it is."

Most assuredly, be it said back to Dr. Bledsoe, it is not! It is not the only record to which Mr. Webster specially appealed; nor is it the *most important* of all those to which he appealed; neither is it the most important of all the records of those days which relate to the nature of the Constitution! Far from it!

The debates in the Federal Convention, and in the State Conventions, and the official acts of the States in calling the Convention, and in assenting to and ratifying the Constitution, are records of a much higher order. These are the records through which the colloquists had travelled so carefully. These are the records which *encumber* the ninety-six pages which the Doctor most probably counted without reading, else he would not clamor so petulantly for additional *minor* proof from *The Federalist!* He complains that more work of "scissors" did

not show that Madison and Hamilton, in *The Federalist*, gave it as *their opinion* that the Constitution was a Compact between States; while, if he had been more studious and less querulous, he would have seen that this *fact* had been *proved* by evidence of a much higher order! He would have seen that the tenure of State Sovereignty had been established, not by secondary evidence of any sort, but by the original "*title deeds*" themselves!

The Doctor would do well to study a book, at least to understand it, before he undertakes to assail its author for such delinquencies, unless his object be only to distort and misrepresent. This, indeed, appears to have been his leading, if not sole object, in his notice of this book. Of this many evidences could be given. A few will suffice.

On page 268 of the *Review*, he makes quotations from my speech on 14th of November, 1860, interlarded with words of his own, so as to make the impression on the minds of his readers that he was quoting connectedly from me; ending with a grand poetic climax of his own interposition, which, by punctuation, is made to appear as if taken from the speech, and on which he comments as follows:

"Now, all this is very fine. We believe it is called poetry; and surely nothing, in its proper place, is better than poetry," etc.

Now I wonder if the Doctor really thinks that this stanza from Bryant,

"Truth crushed to earth will rise again," etc.,

which he so surreptitiously interpolated into my speech, is poetry *properly* put "in its *proper* place?" How does he excuse such "*lese-majesty*, such a petty treason against the great republic of letters—the only republic we have left to us now?" (*Review*, page 254.) Again, page 272, he says:

"We did not credit the statement of a correspondent, who had visited Mr. Stephens at Liberty Hall, that he represented himself as having always been a Secessionist, and denied that Mr. Davis was originally one. But, in the volume before us, there is something like these extraordinary assertions."

In this statement there is a double misrepresentation. No correspondent, who had visited me, ever stated that I represented myself as having always been a Secessionist, and denied that Mr. Davis was originally one, that ever I heard of or believe; and it is utterly untrue that there is in the volume before him any thing like these extraordinary assertions. Let any one read what I have said of Mr. Davis, and then read what Dr. Bledsoe has said upon it, and he will see something quite as pitiful, perhaps, as "the pitifullest thing" the Doctor has lived to see!

On this subject of "pity" (page 292), witness how lugubriously he rages and rants!

"We have seen," says he, "many pitiful things in our time. But—pitifullest of all!—we have, at last, come to see the Vice-President of the late Confederate States, the second officer over a great people, claiming to be a prophet, and yet actually expecting 'the down-trodden people of the Earth' to be regenerated by—'an idea!' If this thing had happened in the hey-day of our prosperity, when all was joyous, and smiling, and happy around us, there might, perhaps, have been some little excuse for such wild extravagance of folly. But we have passed through all the whirlwinds, and darkness, and distress, and storms, and wide-wasting desolations of the late Revolution, only to be told that some 'new idea,' or some little *raree-show*, will yet regenerate the world! And is this a philosopher, or a statesman, or a historian, who thus speaks to us? Or is it some little jeering spirit, whom the Arch-Fiend has sent to us, to make a mockery of all the mighty hopes lying blasted on all sides around us?"

Did any roving knight in the "Great Republic of Letters" ever before wield a more "trenchant blade" than is here so truculently thrust about? Is there any thing in the exploits of the most renowned of the Order in Chivalry, even of him of the "Sorrowful Figure" in his most noted adventure against the windmills, to be compared to this?

Passing such exhibitions of ire and folly, without further comment, let us return to his charges of inconsistency, with his perversions and misrepresentations. On page 276, he says:

"It is evident that Mr. Stephens did not believe in the right of Secession as late as March 14, 1860 [November, 1860, perhaps was meant, for the Doctor hardly ever quotes any thing correctly]; and, even to the

present day, he seems to entertain no very clear, well-defined, or established views on the subject. In the first colloquy of the volume before us, he speaks, it is true, of the right of Secession; but he seems to confound this 'constitutional right' with the extra-constitutional 'right of revolution.' Thus, in what he calls 'The issue presented,' he says: 'The war was inaugurated and waged by those at the head of the Federal Government against these States, or the people of these States, to prevent their withdrawal from the Union. On the part of these States, which had allied themselves in a common cause, it was maintained and carried on purely in defence of this great right, claimed by them, of State Sovereignty and Self-Government, which they, with their associates, had achieved in their common struggle with Great Britain, under the Declaration of 1776, and which, in their judgment, lay at the foundation of the whole structure of American free institutions.'

"Now here 'the great Right of withdrawal from the Union,' is represented as the same with that exercised by those who withdrew from the British Government, and set up the great Republic of this continent."

This contains a palpable misrepresentation, as well as a latent error. The great Right claimed by the Seceding States, and in defence of which the war was waged on their part, is not (in the quotation from me) represented as the same with that exercised by those who withdrew from the British Government. No such thing. But it is clearly and distinctly stated to be the great right of *State Sovereignty* and Self-Government *which had been achieved* by the war of Independence. This is the misrepresentation.

Those who achieved their Independence under that Declaration did not set up *the* great Republic of this continent. There is no such thing as *one*, great single Republic on this continent. In the idea here conveyed, that there is, consists the latent error. They set up thirteen separate and distinct Republics These thirteen separate and distinct Republics set up *the* great *Federal* Republic, of this continent. This *Federal Republic*, like all Federal Republics, is entirely *Conventional* in its origin, structure, nature, and powers. Its constituents were thirteen distinct Sovereign States. This is what the whole discussion on this branch of the subject was intended to elucidate and establish. But the Doctor goes on:

"In those chapters he merely discusses and establishes the doctrine of the Sovereignty of the States, and the nature of the Constitution as a

compact between the States, without even once alluding to the constitutional right of Secession. It cannot be said, that as he held these doctrines he must have believed in the right of Secession, for Mr. Calhoun held the same doctrines, and established them in his great Senatorial speech of 1833, *and yet he denied the right of Secession.* Mr. Stephens may have done the same thing, for all that we know, or for all that he has shown to the contrary."

What is said of me in this place is another palpable misrepresentation, while what is said of Mr. Calhoun, by all sensible, intelligent people, can be regarded as little short of a downright *Munchausenism!* For in that very speech in 1833 (page 281 of the "*Constitutional View*," etc.), to say nothing else of the teachings of his whole life, Mr. Calhoun distinctly said: "Having established this point, I now claim, as I stated I would do in the course of the discussion, the admissions of the Senator, and *among them, the right of Secession*," etc.

What is said by him in the extract, about nothing being said by me in the book upon the "*Constitutional Right*" of Secession, is true; but there is a vast deal said in it about the *Sovereign Right* of Secession. This great right is maintained throughout the work, not as a Constitutional Right, or a Revolutionary Right, but as a *Sovereign* Right. It exists, not by virtue of the Constitution, but by virtue of State Sovereignty. Mr. Calhoun evidently claimed it upon the same grounds. But who, in the face of all these facts, can say that either I or he ever *denied the Right of Secession?*

On page 278, Dr. Bledsoe says:

"In this discussion he (Mr. Stephens) makes the wonderful discovery, that for 'forty years after the Government had gone into operation,' the 'fathers generally, as well as the great mass of the people throughout the country,' maintained the opinion that the right of Secession existed. This wonderful conclusion is established, not by an appeal to the historic records of the country, but by logic. 'The right of a State to withdraw from the Union,' says he, 'was never denied or questioned, that I am aware of, by any jurist, publicist, or statesman of character or standing, until Kent's *Commentaries* appeared, in 1826, nearly forty years after the Government had gone into operation.' Hence, as the right was not denied by any one, he concludes that 'it was generally recognized in all parts of the Union.' The truth is, the subject was not discussed, or considered, by the public men of the country at all during the period referred to; and

hence there was no occasion for the expression of an opinion as to the right of Secession."

Was Dr. Bledsoe mad, crazy, or only excessively *torn* by his *passions*, under the influence and instigation of some "little jeering spirit" of evil, or "the Arch-Fiend himself," when he made such statements? The subject not *discussed during the period referred to!* Did not Judge Tucker's *Commentaries* appear during this period? Did not he clearly maintain the right? Did not some of the New England States, during this period, threaten to secede? Was not a Convention looking to this end called? Were not resolutions passed embracing this right? Was not this an occasion for the expression of an opinion on the subject? Did not Mr. Rawle write his Treatise during this period, clearly vindicating the right? *Are not these historic records appealed to and produced in the book?* There they are regarded by him as "nuisances;" and yet he assumes to rail at the author for not having adduced them! Was there ever a more reckless assertion than that this "wonderful conclusion" was arrived at, "not by an appeal to the historic records of the country, but by logic?" Does he show that these records are wrong, or that the statements founded upon them were not true? Incontrovertibly and imperishably true?

But read him further:

"Is it not wonderful that, instead of studying history in the light of its own records, Mr. Stephens should have attempted to reconstruct it by logic?"

Is not a straight-jacket more appropriate for a man who thus raves, than the business he had in hand?

On page 285, Dr. Bledsoe says:

"'The Government of the United States,' says Mr. Stephens, 'I did think, and do still think, the best the world ever saw, and I fear the world will never see its like again.'"—(Page 31.)

This is another palpable and gross perversion of the text, as any one can see by turning to the page cited. As it there stands, (except that the italics are now made,) it is in these words:

"The object in quitting the Union was not to destroy, but to save the principles of the Constitution. *The form of government therein embodied* I

did think, and do still think, the best the world ever saw, and I fear the world will never see its like again."

The object of this perversion, which runs through his entire review, is apparent. It was that by confounding the *form* of the Government with its administration, he might indulge his passion, in holding up the monstrous spectacle of my extolling a Government which, in its present mal-administration, has inflicted such wrongs upon me personally, and has brought such ruin upon the country generally.

On page 293, in speaking of my attributing to Mr. Jefferson the "new idea" in a Federal system (by which the common agent is empowered to act, to a limited extent, directly upon the individual citizens of the respective States, the States remaining sovereign), which was adopted in our system, (and from which new principle, in the opinion of De Tocqueville, so momentous and advantageous consequences ensued), the Doctor says:

"It did not originate with Mr. Jefferson, or first impregnate his brain with celestial fire. Or, if it did, the fact was wholly unknown to James Madison. For, in his *Introduction* to the great Debates of 1787, Mr. Madison goes into the origin of this 'new idea;' and he does not even so much as allude to his great friend Mr. Jefferson. He is, on the contrary, compelled to give the credit of this 'new idea' to Noah Webster—the same who made the little spelling-book and the big Dictionary."

Now, Mr. Madison, in the paper referred to, does not go into the question of this "new idea," nor does he give the credit of it to Noah Webster. He makes no specific reference to it or its origin at all. What he attributes to Dr. Webster was the idea of a "new system," which should act, it is true, directly upon individuals, and not on the States. But he says nothing about the Sovereignty of the States being retained under that system. His language on the subject is this:

"In the winter of 1784–5, Noah Webster, whose political and other valuable writings had made him known to the public, proposed, in one of his publications, a new system of government which should act, not on the States, but directly on individuals, and vest in Congress full power to carry its laws into effect."—(Elliot's *Debates*, vol. 5, p. 118.)

In this, it is seen, there is no allusion to any idea of permitting the Federal Government to act on the individual citizens of the States, in limited and specified cases only, and with the full reservation of the Sovereignty of each of the States respectively. In other words, there is nothing in this statement attributing to Dr. Webster any idea whatever which is different from the idea of doing away entirely with the *Federal* system, and instituting *a new system* of a General and National Government, vesting in Congress full power to carry its laws into effect, such as Hamilton, Randolph, and other Nationalists espoused in the Convention afterwards. Such a change would have been a "*new system*," but it would not have been based upon the "*new idea*," or new principle in Federal Republics referred to. I have never seen the pamphlet of Dr. Webster. It may have contained this identical "*new idea*," or new principle, which was subsequently incorporated in our Federal system, for he was a very profound philosopher on more subjects than language, notwithstanding the jeering remarks of the redoubtable Dr. Bledsoe.

But Mr. Madison could not, I think, have intended to attribute the *idea* of this new principle of our *present Federal system* to Dr. Webster, for on page 120 of the 5th volume of Elliot's *Debates* (in the same paper referred to by Dr. Bledsoe), he says:

"As a sketch on paper, the earliest, perhaps, of a Constitutional government for the Union (organized into regular departments, with physical means operating on individuals), to be sanctioned by *the people of the States*, acting in their original and sovereign character, was contained in the letters of James Madison to Thomas Jefferson of the 19th of March; to Governor Randolph, of the 8th April; and to General Washington, of the 16th of April, 1787—for which see their respective dates."

Now, in the letter to Governor Randolph of the 8th of April, 1787, alluded to, Mr. Madison expressly states: "I hold it for a fundamental point that an individual independence of the States is utterly irreconcilable with the idea of an aggregate Sovereignty."—Garland's *Life of J. Randolph*, vol. 1, page 36.) This shows clearly that he had, up to that time (April, 1787), no clear conception himself or appreciation of this "new idea,"

and he can hardly, therefore, be supposed to have meant by what is said of Dr. Webster's "new system," to attribute to him this "new idea" for the structure of a *Federal system.* What he said of Dr. Webster's "new system," was in the same paper, as stated, in which he alludes to his own subsequent sketch. This sketch or plan is to be found in his letter to General Washington referred to, (*Washington's Writings* by *Sparks*, page 516, vol. 9); and though it does give a general outline for "a new system" of Government, organized into regular departments, *operating directly upon individuals*, and not the States; yet it does not contain this "new idea," for in his plan the Sovereignty of the separate States *was not retained.* It was but the outline of Governor Randolph's National plan, which was afterwards submitted to the Philadelphia Convention, when it met in May, 1787. This sketch does, also, provide for a *division of the powers* of Government, under the new system proposed, into *Legislative, Executive, and Judicial Departments.* But was not even this idea of such a division of powers and general organization, set forth in this plan, which he says was the first *sketch* on paper of a Constitutional government for the Union, derived by him from Mr. Jefferson, to whom I attributed it, though Mr. Madison says nothing about where he got it from? The evidence is strong, if not conclusive, that it was. For this division of powers and general system of organization for a Federal system of Government was distinctly pointed out by Mr. Jefferson to Mr. Madison, in a letter from Paris, the 16th of December, 1786. (See this letter in the "*Constitutional View of the War between the States*, etc., page 94.) May not Mr. Madison's letter of the 19th of March, 1787, referred to by him, have been a reply to this one from Mr. Jefferson, of December previous? In acknowledging his of the 16th of December before, and in reply to it, may he not have sent him a copy of the same sketch on paper to which he refers (a copy of which was sent to Washington a short time afterwards), and which is found among Washington's papers? Is not the probability, the weight of evidence, strongly that way? especially as all we have, so far as I can find, of that letter of Mr. Madison to Mr. Jefferson, of 19th of March, 1787, is a short ex-

tract (5th *Elliot*, 107), in which there is no reference whatever to this subject.

Now, in this letter of Mr. Jefferson to Mr. Madison, of 16th of December, 1786, this *outline of organization* in a new system, as set forth in Mr. Madison's *sketch*, is fully given; and not only this, but in that same letter this "new idea" is clearly embraced, though not distinctly expressed. It was because it was so embraced that I attributed the first "impulse of its quickening life" to the "brain of Mr. Jefferson," (page 479).

The general outline suggested in that letter (of the 16th December, 1786, for a new system, was that the Union should be so modelled as "to make us one nation as to Foreign concerns, and to keep us distinct in Domestic ones." "But to enable the Federal Head to exercise the powers given to it, to the best advantage," Mr. Jefferson said that the General Government should be "*organized*" as the State Governments were, "into *Legislative, Executive, and Judiciary*" Departments. Now, what I said about this letter of Mr. Jefferson, written to Mr. Madison four months before his *sketch* was put upon paper, is as follows:

> "This, as far as I have been able to discover, after no inconsiderable research, is the first embodied conception of the general outline of those proper changes of the old Constitution, or Articles of Confederation, which were subsequently, as we shall see, actually, and in fact, engrafted on the old system of Confederations, and which makes the most marked difference between ours and all other like systems."—(Page 94.)

The same opinion I still repeat, notwithstanding all that Dr. Bledsoe has said, for his own amusement, about Dr. Webster's "little spelling-book and big Dictionary." I repeat, I have not been able to see Dr. Webster's pamphlet alluded to by Mr. Madison. It may be that in it he anticipated Mr. Jefferson in recommending that a Federal Government should be so formed as to make us one Nation as to foreign ones, and separate and distinct ones as to ourselves, with an organization and machinery in the Conventional State thus formed, for the full exercise of all its delegated and limited powers, similar to those of the separate States creating it. If so, then he is entitled to the honor of this "new idea," and no small honor it is, how-

ever little it may be estimated or appreciated by superficial pretenders. But, certainly, Mr. Madison's statement referred to furnishes no just grounds upon which to base a claim of it for him. Dr. Bledsoe has furnished no new light upon the subject, and I am therefore still of opinion that the credit of this "new idea" and "new principle" in Federal Republics, which was introduced into our system, is due to Mr. Jefferson.

In conclusion, I may be excused for indulging in a very few words in reference to other portions of this review, which do not come within the limits marked out for this notice.

For such general reference let this suffice. The whole article (including the parts I have felt it a personal duty thus to notice, as well as all the rest), was evidently written in ill-humor—perhaps during the heated term of the dog-days; and what Dr. Bledsoe says in the same number of the *Quarterly* (page 433), of Dr. Brownson, might be very appropriately said of himself, in relation to this production; and might be suggested to him as the only appropriately fitting answer to it, so far as he is concerned, to wit:

> "Had Dr. Brownson bestowed more conscientious labor on his political productions, with an eye single to truth and always steady [in?] its movements, he would have written far less than he did; but then his writings would have been far more worthy of the attention of posterity. As it is, they were born of the passions of the hour, and, with the passions of the hour, they will pass away."

But this he would look upon as the work of "scissors," and we know how distasteful that might be to him.

Very respectfully,

ALEXANDER H. STEPHENS.

ARTICLE II

I.—Mr. Stephens' Reply to Hon. S. S. Nicholas, of Kentucky.

Liberty Hall,
Crawfordville, Ga., *June* 4, 1869.

Messrs. Editors National Intelligencer, Washington, D. C.:

I noticed in an issue of your paper some weeks ago, an editorial in the following words:

"*The Prime Cause of the Rebellion.*—We publish to-day a communication from Hon. S. S. Nicholas, of Kentucky, upon the '*causa causans* of the rebellion, its remedies, etc.' Judge Nicholas has long been a close and intelligent student of our political affairs. A life-long and unswerving advocate of the maintenance of constitutional right, he has watched with zealous regard every movement to impair its force. To these observations he has brought the aid of a powerful intellect, an iron energy, the experience of half a century devoted to judicial and literary labors, and a patriotic devotion that is questioned by none who know him, although oftentimes differing widely from his opinions. A communication upon such a subject from such a source must always command respectful consideration and invite serious reflection."

In the same paper appeared the communication of Judge Nicholas referred to, which is entitled "The Causa Causans of the Late Rebellion."

In this article the writer indulges in some remarks in reference to myself which I do not think ought to be permitted to pass unnoticed by me, coming from the high source they do, and being endorsed, as they are, by so high authority as the *National Intelligencer*. The cause of truth, as I understand it, requires that they should not be permitted thus to pass. I must, therefore, ask your indulgence in allowing me to make

such comments in reply as I think the matter deserves. This would have been done at an earlier day, but for continued severe bodily affliction. The remarks to which I specially refer are as follows:

"The following condensed extracts are taken from the elaborate and able book of the Hon. A. H. Stephens on the causes of the late rebellion, and in attempted vindication of the pernicious dogma of secession.

"'In the nature of the United States Government and character of the Union can alone be discovered the remote but real causes of the war. All these troubles resulted as inevitable consequences from the violation of the fundamental laws governing our political system.

"'Negro slavery was unquestionably the occasion of the war, the main exciting cause on both sides, but was not the real cause, the *causa causans*, of it.

"'The war was inaugurated on the one side to vindicate the Right of Secession, and on the other in denial of the Right and to resist its exercise. It grew out of opposing views as to the nature of the Government, and where, under our system, ultimate sovereign power or paramount authority resides.'

"Mr. Stephens has a perfect right to use his time and talents in self-justification as an aider of the rebellion; but he is not justifiable in even unintentionally drawing upon the orthodox State Rights principle additional obloquy by his attempt to show that 'opposing views' as to those rights was the true cause of the civil war."

What Judge Nicholas means by "the orthodox State Rights principle" he has not stated; nor has he intimated *wherein* I have in the book, to which he refers, "unintentionally" or otherwise attempted to draw upon this orthodox principle, according to his idea of it, additional obloquy or obloquy of any kind. Nothing certainly was further from my design than what is thus imputed to the result of my labors. The great object with me was not self-justification barely, as he intimates, but the vindication of the only *true* State Rights principles which are consistent with the facts of the history of our country. On these alone our entire fabric of Constitutional Liberty was based in the beginning, and on these alone can it be maintained and preserved for the future. These principles, from the indisputable and irrefragable facts of history adduced in their vindication, (and, I may say, establishment beyond the power of refutation), necessarily carry with them the sovereignty of the several States.

Whatever ideas Judge Nicholas may have of the orthodox principle of State Rights, I venture to affirm that it would be impossible for him, or anybody else, to name any single right of a State, or any single principle of State Rights under our system, which does not depend for its existence upon the necessarily admitted sovereignty of the several States! There is no such thing as State rights without State sovereignty. The States severally possess no power, nor enjoy any privilege, by favor, grant, or delegation. All their rights and powers, as well those retained as those delegated, are inherent and sovereign. This is an indisputable truth. It is equally true on the other side, that the General Government possesses no power by inherent or sovereign right. All its rights and powers are held by delegation only; and held in *trust* by delegation from the sovereign States constituting it. Of course I speak of matters as they stood "*ante bellum*."

If the facts of our history be as set forth in the volume referred to (and the world is challenged to disprove them), then the conclusions to which they lead are inevitable, even though they lead to a complete justification of the Sovereign Right of Secession as the only sure check and barrier against the usurpation of undelegated power on the part of the General Government. In the domain of reason the conclusions of logic are inexorable. This is the appropriate domain of history. Within its limits my labors were strictly confined.

But my object in this note is not to join or raise any discussion with Judge Nicholas on the matter of "the orthodox State Rights principle." It will be time enough for me to do this with him or anybody else when there is an attempt made, by reason and argument, to refute the positions of the book upon that subject. What I do not wish to permit to pass unnoticed is what he styles "condensed extracts" from the book referred to. Against one of these "condensed extracts" it is my wish to enter a respectful protest. Many of your readers, in this as well as in foreign countries, may see these extracts who may never see the book itself. I do not wish them to remain under the impression that I am therein accurately quoted; at least, if they give sufficient attention to the subject to be impressed by

the matter at all, I think it essential to a correct understanding that their opinions should be formed from my own language, and not his representations of it.

What I said about the chief cause, the origin, and actual *inauguration* of the war is in these words:

"Slavery, so-called, or that legal subordination of the black race to the white, which existed in all but one of the States when the Union was formed, and in fifteen of them when the war began, was unquestionably the occasion of the war, the main exciting, proximate cause on both sides—on the one as well as the other. But it was not the real cause, the '*causa causans*' of it. That was the assumption on the part of the Federal authorities that the people of the several States were, as you say, citizens of the United States, and owed allegiance to the Federal Government as the absolute sovereign power over the whole country, consolidated into one nation. The war sprung from the very idea you have expressed, and from the doctrines embraced in the question propounded to me. It grew out of different and directly opposite views as to the nature of the Government of the United States, and where, under our system, ultimate sovereign power or paramount authority properly resides.

"Considerations connected with the *legal status* of the black race in the Southern States, and the position of several of the Northern States toward it, together with the known sentiments and principles of those just elected to the two highest offices of the Federal Government, (Messrs. Lincoln and Hamlin), as to the powers of that Government over this subject, and others which threatened, as was supposed, all their vital interests, prompted the Southern States to withdraw from the Union, for the very reason that had induced them at first to enter into it: that is, for their own better protection and security. Those who had the control of the administration of the Federal Government denied this right to withdraw or secede. The war was inaugurated and waged by those at the head of the Federal Government against these States, or the people of these States, to prevent their withdrawal from the Union. On the part of these States which had allied themselves in a common cause, it was maintained and carried on purely in defense of this great right, claimed by them, of State Sovereignty and Self-Government, which they with their associates had achieved in their common struggle with Great Britain, under the Declaration of 1776; and which, in their judgment, lay at the foundation of the whole structure of American free institutions.

"This is a succinct statement of the issue, and when the calm and enlightened judgment of mankind, after the passions of the day shall have passed off, and shall be buried with the many gallant and noble-spirited men who fell on both sides in the gigantic struggle which ensued, shall be pronounced, as it will be, upon the right or wrong of the mighty con-

test, it must be rendered in favor of the one side or the other, not according to results, but according to the *right* in the issue thus presented."—*Constitutional View of the Late War between the States, Vol.* 1, p. 28.

Now, if Judge Nicholas saw no difference between the issue as thus presented by me touching the *inauguration* of the war, and that in his "condensed extract," then, perhaps, it would be a useless waste of time to argue with him upon the subject of State Rights, or any other question which requires close attention to the proper import of words. If he did see the difference, then, there is no need for any further defense before an intelligent public for *his* arraignment of me for doing what he is pleased so gratuitously to say I had no right to do, or was "not justifiable" in doing. The real cause of the war, as set forth in the issue presented by me, condensed in few words, was the denial of the fact that ours was a Federal Government; and a violation of this fundamental principle of our complicated political organization on the part of those controlling the General Government at the time, by assuming that the United States constituted a *nation of individuals*, with a consolidated sovereignty in the Central Government, to which the ultimate as well as primary allegiance of the citizens of the several States was due; and that any attempt by the several States, or any of them, to resume the sovereign powers which had been previously delegated in trust only by them to the Federal agency, was rebellion on their part. This violation of organic principles is stated to have been the immediate and real cause of the war—the "*causa causans*" of it. This statement, sustained by indestructible facts as it is, must remain the truth of history for all time to come.

As to the *origin* of the war, or the first outbreak of hostilities, I did not say that it was "*inaugurated* on the one side to vindicate the Right of Secession, and on the other in denial of the right and to resist its exercise."

It was not *inaugurated* by the Seceding States at all. It was *inaugurated* and waged by those then controlling the Federal Government to prevent Secession. On the part of the Seceding States, it was carried on purely in defense of their right to withdraw from the Federal Union of States, which they

claimed as a Sovereign Right. This is the substance of the statement on that point; and so the fact will go down to posterity.

The truth is well established that the Seceding States did not wish or desire war. Very few of the public men in these States even expected war. All of them, it is true, held themselves in readiness for it, if it should be forced upon them against their wishes and most earnest protestations.

This is abundantly and conclusively apparent from the speeches and addresses of their leading public men at the time. It is apparent from the resolutions of the State Legislatures and the State Conventions, before and in their Acts of Secession. It is apparent and manifest from their Acts in their new Confederation at Montgomery. It is apparent from the Inaugural Address of President Davis. It is apparent from the appointment of Commissioners to settle all matters involved in the separation from their former confederates, honorably, peaceably, amicably, and justly. It is apparent and manifest from every act that truly indicates the objects and motives of men, or from which their real aims can be justly arrived at. Peace not only with the States from which they had separated, but peace with all the world, was the strong desire of the Confederate States.

The war was not only *inaugurated* by the authorities at Washington, as stated, but it was inaugurated by them while the Confederate Commissioners, with the olive-branch of peace in their hands, were at the seat of the General Government; and were given to understand by those in authority there, that Fort Sumter, which became the scene of the first conflict of arms, would, at an early day, be peacefully evacuated by the Federal troops then holding it. The war was *inaugurated*, if not begun, when the hostile fleet set out for Charleston for the purpose of reinforcing that fort, "*fas aut nefas.*" Hallam has well said, that the "aggressor in a war is not the first who uses force, but the first who renders force necessary." And so the facts of history will ever show how and by whom this late terrible and most lamentable war was *inaugurated* as well as by whom it was *begun*. They will show who were the actual

aggressors, and who first violated the organic principles and laws of our American system of Self-Government by the people.

Whatever may be the ultimate results of this war, so far as the fate of Constitutional Liberty on this continent is concerned, the responsibility of its *inauguration* can never be justly and truly charged upon the Seceding States.

Their object in separating from their associates, with whom they considered they had been united in a Federal compact, was not only to remain in peace with them, but to preserve and perpetuate the principles of that Constitution which had demonstrated such wondrous results as a bond of Union between Sovereign States so long as its principles had been adhered to; but which they apprehended, under erroneous construction, if not checked, would soon lead to consolidation and despotism.

If they were right in their position that ours was a Federal Government, then the authorities at Washington were the aggressors in inaugurating the war to prevent the exercise of the right of withdrawal; if they were wrong in their position as to the character of the General Government; if it, in fact, was not Federal in its nature and character, but was a Government with a consolidated sovereignty in the central head, then they were the aggressors in rendering the inauguration of the war necessary for the maintenance of central supremacy. The whole matter of right or wrong in the beginning of the war, as well as its disastrous consequences, depends upon the great question, whether the General Government was a Federal Republic or not, and what, under the Constitution, was the *true* "orthodox State rights principle" to which Judge Nicholas refers, but does not enlighten the public upon. In other words, it depends upon the true answer to the question, where, under our system, does sovereignty reside? Is it lodged in the General Government, or has it passed to the whole people of the United States as one aggregate mass, or does it still remain with the people of the several States as distinct political organizations?

The doctrine of the book is that sovereignty resides just where it did in 1776, 1778, and 1787—that is, *with the people of the several States!* It maintains that all that the States did by the adoption of the Constitution was to delegate, in trust,

the exercise of certain specific and limited sovereign powers to the General Government, while they retained to themselves, severally, sovereignty itself, that great source from which all political powers emanate.

This doctrine, I must insist, too, is not only the true doctrine, but the *orthodox* doctrine upon the subject; Judge Nicholas' opinion to the contrary, notwithstanding. Upon the point of orthodoxy, in reference to this matter, I know of but one standard on the subject, and that is the Jefferson standard, erected and established in the first of Kentucky's great resolves of 1798. The doctrine of this chief apostle of State Rights and human rights, then announced, rescued and saved the country from consolidation and centralism in 1801. Under the operation of this most orthodox principle so established, with the general and tacit acknowledgment of its correctness by all the Departments of the Government, we increased, grew, and prospered for sixty years as no nation on earth ever did before. Whatever disturbances temporarily marred the harmony of the general system in the interval upon the subjects of tariffs, internal improvements, the *status of the African population*, etc., grew out of departures, or attempted departures, in the Federal Administrations from the standard thus erected by Jefferson as to the nature and extent of the powers of the Federal Government. The more nearly the principles taught by him were adhered to, the more prosperous and happy the nation was in all its parts and members.

I use the word *nation* in this connection purposely; for, notwithstanding the very great abuse of this word, in very recent times, we are nevertheless a *nation* in a very proper use of that term. Far was it from my object in the argument, in the volume referred to by Judge Nicholas, to show that "the United States do not constitute a nation," as I have seen it stated by some writer, in what he was pleased to consider a review of the work. The great object with me, on the contrary, was to show not only that we are *a nation*, but *what sort* of a nation we are! It is most clearly demonstrated in that argument that we are *not a nation of individuals*, blended in a common mass, with a consolidated sovereignty over the whole;

but it is shown with equal clearness that we *are a nation*, the constituent elements or members of which are separate and distinct political organizations, States, or Sovereignties!

It is shown that ours is a *conventional nation!*—one created by compact. All federal republics, and all confederations between separate and distinct sovereign powers, are conventional nations. We were a nation under the first Articles of Confederation, and we are just such a nation now—not a nation of one people or one political organization, but a nation of several distinct political organizations. We are a "confederated nation," as Washington properly styled the present Union. That is, a nation of States, or, what is the same thing, a *nation of nations!* —Hence the appropriateness of the motto adopted by the fathers to express the idea of the work—"*E pluribus unum.*"

In this sense we are not only a nation, but a nation in the highest and grandest type that the world ever saw. It rises above the simple to the complex form.

It is, indeed, in many respects, a peculiar nation, even in its complex form; differing from all other nations of its own type in many of its most striking characteristics. These peculiar features of its structure place it far in advance of all other Confederate Republics in its wise provisions for the preservation of free institutions, if it be but rightly administered. The most important of these features is the new principle which it introduced in the plan of federal unions, of permitting the common government, the conventional power or nation, to execute its delegated powers, within their limited sphere, directly upon the citizens of the several States, or smaller nationalities composing it.

This new idea of so constituting a Federal Republic as to make of its separate members "one nation as to all Foreign concerns, and to keep them distinct as to Domestic ones," with a division of the powers delegated into "Legislative, Executive, and Judicial departments," with a perfect machinery of government to operate within prescribed limits in the execution of the delegated powers, constitutes the most striking difference between our present Federal Union and all former republics of its class. It marks the greatest stride of progress in free insti-

tutions ever before made. It is this which has so impressed the minds and excited the admiration of intelligent foreigners in contemplating the wonderful workings of the American system. This is the feature to which the learned and philosophic De Tocqueville refers when, speaking of our Constitution, he says:

"This Constitution, which may at first be confounded with the federal constitutions which have preceded it, rests in truth upon a wholly novel theory, which may be considered as a great discovery in modern science. . . . . And this difference produced the most momentous consequences."

Of the same feature Lord Brougham has recorded his opinion in the following words of high import:

"It is not at all a refinement that a Federal Union should be formed; this is the natural result of men's joint operations in a very rude state of society. But the regulation of such a Union upon preëstablished principles, the formation of a system of government and legislation in which the different subjects shall be, not individuals, but States, the application of legislative principles to such a body of States, and the devising means for keeping its integrity as a Federacy while the rights and powers of the individual States are maintained entire, is the very greatest refinement in social policy to which any state of circumstances has ever given rise, or to which any age has ever given birth."—*Brougham's Political Philosophy, Vol.* 3, p. 336.

This grand conception of so forming, modelling, and constituting our Union of States, which so impressed De Tocqueville, and which Lord Brougham considered "the very greatest refinement in social policy" "to which any age has ever given birth," originated with Mr. Jefferson. It came from the same master-mind whose master hand drew the Declaration of Independence in 1776, and in 1798 set forth with so much clearness and power the true, if not at present orthodox principles of the whole structure of our Federal organization, in the entire series of Kentucky's famous Resolutions, before referred to, and which were so thoroughly endorsed and established by the country in 1801. To the administration of the Government in conformity with these principles, or with but slight departure from them, the "momentous consequences" spoken of by De Tocqueville,

distinguishing our unparalleled carer, for sixty years, in growth, prosperity, happiness, and real greatness, are mainly attributable.

And now, Messrs. Editors, do you ask, *Cui bono?* Why so much written upon the dead issues of the past, when questions of so much magnitude of a practical character press upon the public mind? If so, the reply is twofold. First, to vindicate the truth of history, which is itself a high duty on the part of every one who has it in his power to do it; and, in the second place, to show the people of these States, in this vindication, not only the true cause, the real "*causa causans*," of the late war, but the real cause of their present troubles. The Federal machinery for the last ten years has been abnormal in its action. It must be brought back to the Jeffersonian doctrines, and made to conform in its workings with the organic principles of its structure, before there can possibly be a return of the days of peace, harmony, prosperity, and happiness which formerly marked our course. There is no other hope for constitutional liberty on this continent. Judge Nicholas may "dream dreams" about another Constitutional Amendment, providing a new mode of electing the President, but the remedy lies in no such device as that. It lies simply in bringing back the Government in its administration to original first principles. This is to be done, not by Secession, however rightful and efficient a remedy that might be. That is abandoned. Nor is it to be done by force or violence of any kind, except the force of reason and the power of truth. It is to be done, if at all, at the ballot-box. Free institutions are more generally lost than established or strengthened by a resort to physical force. They are eminently the achievement of virtue, patriotism, and reason. That our institutions, and even nominal form of government, are now in great danger, the prudent, sagacious, and wise everywhere virtually admit. An able editorial in your own paper, not long since, put the pertinent and grave question, "Whither are we drifting?" To this question I take the occasion, for one, to give you a direct and positive answer. We are drifting to consolidation and empire, and will land there at no distant period as certainly as the sun will set this day, unless the people of the several States awake to a proper appreciation of the danger,

and save themselves from the impending catastrophe by arresting the present tendency of public affairs. This they can properly do only at the ballot-box. All friends of Constitutional Liberty, in every section and State, must unite in this grand effort. They must seriously consider, and even *reconsider* many questions to which they have given but slight attention heretofore. They must acquaint themselves with the principles of their Government, and provide security for the future by studying and correcting the errors of the past.

This is the only hope, as I have stated, for the continuance of even our present nominal form of government. Depend upon it, there is no difference between *consolidation* and *empire!* No difference between *centralism* and *imperialism!* The end of either, as well as all of these, is the overthrow of liberty and the establishment of despotism. I give you the words of truth in great earnestness—words which, however received or heeded now, will be rendered eternally true by the developments of the future.

Yours, most respectfully,

ALEXANDER H. STEPHENS.

II.—REJOINDER OF JUDGE NICHOLAS.

MR. STEPHENS, in reponse to my former number, complains of injustice done him by my "condensed extracts" from his book. The sole object in the condensation was to attain that brevity so indispensable in newspaper discussion. If it has been so unsuccessful as to make him fancy even that injustice has been done him, I must make the *amende* of an ample apology and the expression of sincere regret.

He now says that the Federal Government "must be brought back to the Jeffersonian doctrines, and made to conform in its workings with the organic principles of its structure, before there can possibly be a return of the days of peace, harmony, prosperity, and happiness which formerly marked our course. There is no other hope for constitutional liberty on this continent. . . . This is to be done, not by secession, however rightful and efficient a remedy that might be. *That is abandoned.*

Nor is it to be done by force or violence of any kind, except the force of reason and the power of truth. It is to be done, if at all, at the ballot-box." In another place he speaks of "the Sovereign Right of Secession as the only check and barrier against the usurpation of undelegated power on the part of the General Government."

Whilst thus conceding that the ballot-box is the only remedy for the restoration of the prostrate Constitution, he takes care to claim that the only valuable restoration must be accompanied by recognition of the right of secession as a part of the only orthodox principle of State-rights. Nor does he insist upon this alone for the protection of State-rights, but involves the individual rights of citizens in the same category, declaring "the Sovereign Right of Secession as the only check and barrier against the usurpation of undelegated power."

Concurring most heartily in the great necessity for a restoration of the Constitution through the ballot-box, and in view of the great influence which Mr. Stephens has at the South, the propriety and expediency of these utterances of his becomes an important, living issue, well worthy the serious consideration of all who sincerely desire a speedy restoration of the Constitution. The remedy being exclusively in the ballot-box, there must be concert of action, if not identity of proclaimed views, North and South, in the party attempting the restoration. Any recognition direct or indirect of the right of secession must be a great obstacle in obtaining such concert of action, as there are not probably five hundred men at the North who believe in or are at all willing to concede such a right. If, as he says, that right as a remedy is abandoned, where the expediency or policy for thus pertinaciously insisting upon its legitimacy, where it will require all the suasion that can be used to make the people of the North believe that it is veritably abandoned, and is not to continue the aim of a ceaseless controversy at the South, and of all those elsewhere who claim the protection of orthodox State-rights as a healing motive for the restoration of the Constitution.

The verity of this being a living issue consists in the obvious necessity of influential men at the South doing what they can

to obviate the injury which these utterances of Mr. Stephens will cause both North and South, if they remain uncontradicted, as a true exposition of Southern sentiment. No hearty coöperation at the North for a restoration of the Constitution can be rationally expected so long as it is even suspected that, in the pursuit of constitutional restoration, Southern men are looking to it as a means for the ultimate recognition of the right of secession. These utterances are as ill-advised as was the disastrous interference with the New York convention by unpardoned Southern generals.

If Southern men of influence concur with him in the opinion that the right of secession is the only barrier against Federal usurpation, then they can have little motive for aiding Constitution restoration; its great purpose being our restoration to the protection of that legitimate barrier against usurpation which is sufficient, according to the former creed of all lovers and admirers of the Constitution.

So far from there being any chance of ever revolutionizing the anti-secession sentiment of the North, it is the belief of men fully as sagacious as Mr. Stephens on questions of practical statesmanship, that if a National Convention for revising the Constitution be held ten or twenty years hence, not a voice will be raised in it—no, not even from South Carolina—for the direct recognition of the right of secession. Instead of establishing such a loose impracticability as a form of government, the danger is altogether the other way; that is, the increase of territory and population, by demonstrating the necessity of strong government, will induce public sentiment in favor of one that will be unnecessarily strong. As things now are, there seems to be a disposition on the part of men of Mr. Stephens' stamp to waive, for the present at least, the right of secession as an impracticable dogma, resting, as it does, upon a non-expressed, but purely inferential, hypothesis. But that in truth should constitute no reason for withholding a total abnegation of the dogma whose falsity is proved by the admission of its impracticability. If the right of secession were distinctly recognized in the Constitution, it would never be used for any available purpose. If, for instance, Louisiana, Kentucky, or Pennsylvania were to exercise

the right by declaring its independence, the only result would be giving the Government the trouble of declaring war against it and conquering its reännexation as foreign territory. No statesman of ordinary practical sagacity can doubt this.

As to ultimate sovereignty and paramount allegiance, there is no need for diving into the abstractions of political metaphysics for ascertaining what they are in reference to American citizens. They both belong to the Federal Constitution. All of us who have passed through office, Federal or State, have bound ourselves to that supremacy and allegiance by a solemn oath.

As to orthodox State rights, they consist of such power as is neither granted to the Federal Government nor forbid to the States by the Constitution, with a plainly-implied negation of any right to nullify or secede, which negation is to be taken as part of what is forbidden to the States.

State rights are very important and sacred, but not more so than the individual rights of citizens. Politically speaking, the sacredness of both rests mainly on the consecration given them by the nation in the Constitution.

III.—Mr. Stephens' Sur-rejoinder to Judge Nicholas.

Liberty Hall,
Crawfordville, Ga., *June* 23, 1869.

Messrs. Editors of the National Intelligencer, Washington, D. C.:

Gentlemen: You will please allow me, I trust, a few words in rejoinder to Judge Nicholas. It is not my purpose or intention to protract a useless controversy with him. Discussions are seldom instructive, or even entertaining, when the positions or "*utterances*" of one side are either not comprehended, or not fully and fairly set forth by the other.

In his response to my former letter correcting the statement in his "condensed extracts" from the book referred to, as to my position therein assumed, touching the *inauguration* of the late war, etc., he makes all the *amende* and apology that was expected. This, in substance, is, that *he* saw no difference be-

tween the position in the book and the one assigned in the "condensed extracts;" and that if *I* fancied there was any, he sincerely regrets it, etc. To your readers, who now have both fully before them, no further comments are necessary—not even on the *amende* and apology as made. There that matter may rest; and if he had stopped there himself, I should not have asked your indulgence for any further hearing.

But, in his response, he takes occasion to comment upon certain *utterances* (as he styles them) of mine in that letter, and, in these comments, is quite as much at fault in quoting from the letter as he was in his "condensed extracts" from the book. This error was quite as unintentional on his part, no doubt, as the others; still it is of too grave a character to be allowed to pass unnoticed.

In his comments upon the letter the following paragraph appears:

"He (alluding to me) now says that the Federal Government 'must be brought back to the Jeffersonian doctrines, and made to conform in its workings with the organic principles of its structure, before there can possibly be a return of the days of peace, harmony, prosperity, and happiness which formerly marked our course. There is no other hope for Constitutional Liberty on this continent. . . . This is to be done, not by Secession, however rightful and efficient a remedy that might be. *That is abandoned!* Nor is it to be done by force or violence of any kind, except the force of reason and the power of truth. It is to be done, if at all, at the ballot-box.'"

In all this I am quoted correctly enough. But the next sentence is as follows:

"In another place he speaks of 'the Sovereign Right of Secession as the only check and barrier against the usurpation of undelegated power on the part of the General Government.'"

The comments then go on, with a great deal of misplaced rhetoric, to demolish this position, which is his own, and not mine; or at least one which he assigns to me, but which I never assumed. No such utterance emanated from me. What I did say was this:

"If the facts of our history be as set forth in the volume referred to, (and the world is challenged to disprove them,) then the *conclusions* to

which they lead are inevitable, even though they lead to a complete *justification* of the sovereign right of secession, as the only *sure* check and barrier against the usurpation of undelegated power on the part of the General Government."

The sentence immediately preceding is in these words: "Of course I speak of matters *ante bellum*."

The proposition, therefore, as stated by me, even Judge Nicholas, if he will study it closely, will, as a logician, hardly venture to deny.

As an investigator of truth, if he had been inclined to avoid the conclusion, (as matters stood *ante bellum*, of course,) he would have seen that this could only be done by a successful attack upon the facts; and not by resorting to the expedient of severing the sentence, and even distorting the conclusion, as it appears in its proper connection.

Secession, before the war, was regarded by many of the ablest men at the South—men whose patriotism is unquestionable—as the only *sure* check and barrier in the last resort against usurpations of undelegated power; but, since its trial, not one is to be found who considers it a *practical remedy* for Federal wrongs of any sort. I therefore distinctly stated in another, and in the after part of the letter, that this remedy, however rightful under the system it might be, *had been abandoned*. This clearly appears from his own quotations from the letter; but it does not appear from those quotations, as they stand in his response, that it was in the after part of the letter, when I was speaking of matters as they stand since the war.

When I stated that Secession had been abandoned by the people of the Southern States, I meant all that I said, and uttered nothing but the truth. Its abandonment was accepted *in good faith* as *one* of the *results of the war*. It is no longer looked to, in *any contingency*, as a practical remedy or check against any usurpations or abuses of power on the part of the Federal Government. This abandonment on their part has been manifested in every form in which public as well as private honor can be pledged. All the States in their conventions have, without equivocation, given it an emphatic abandonment. Even the Southern Generals, in the New York Convention, last year, to

whom such an unkind allusion is made by Judge Nicholas, gave their pledged honor to this abandonment by unanimously sustaining the platform of principles then announced. Whether they were "*unpardoned*" or not, their individual honor and integrity as men were certainly untarnished and unsullied, far beyond the reach of all impeachment or reproach. This fling of Judge Nicholas at the Southern Generals was, as it seems to me, no less unkind than unjust. Why he should have applied to them the epithet of "unpardoned," I know not; for, if I am correct in my recollection, the imputation is utterly without foundation in fact.

No utterance of mine, therefore, presents to the people of the North or South the question of Secession as *a living issue.* This is but the work of the imagination on the part of Judge Nicholas. I opposed it as an *expedient* remedy at the time it was resorted to, though I believed it to be a *rightful* one. And though I believe it to be a rightful one, I did not believe it to be the *only one*, much less the *surest* or the *best* one. I then thought, and still think, that there were other remedies much more practicable and expedient. Among these were appeals to the good sense, virtue, intelligence, and patriotism of the people of the several States, and earnest invocations to them to adhere to the principles of the Constitution, as the *palladium* of the common rights and interests of us all. The utterances now complained of are but appeals and invocations of this character.

Representative Governments under no form can be maintained by any people long who have not the intelligence to understand, the patriotism to approve, the virtue to maintain inviolate its forms and principles as established. In arriving at a correct knowledge of these, under our complex system, *which the people must do* if they would preserve their free institutions under it, there is no necessity for a resort to "political metaphysics," as Judge Nicholas intimates, or metaphysics of any sort. Neither is it a question involving any sort of abstractions. It is a question purely of *facts*, of unquestioned and unquestionable historic records. These clearly show that it is, as I maintain, a Federal Republic—all its powers being dele-

gated, specific, and limited; and that there is in it no such feature or principle as a consolidated sovereignty, with general and unlimited powers in the Federal head, as maintained by those who have lately controlled its action, under their construction, to such mischievous and disastrous results. Shall this abnormal action of the Government be corrected by the people at the ballot-box? Shall the administration be brought back to the standard of principles so generally recognized in the better days of our history, or shall it be permitted to go on in its present course until even the name of Republic is ignored?

This is the living issue I presented!

It is now the chief practical question before the people of the several States. It involves, on the one side, Constitutional Liberty, as established by the Fathers; on the other, Consolidation, Absolutism, and Monarchy of some sort or other. There is no middle ground—no half-way house—between the alternatives of this issue as above stated. Between these the people must choose. They must take one side or the other. There are but two great political principles in antagonism in this country at this time. The one is for the continued maintenance of free institutions by popular government; the other is for an overthrow of these, and the establishment of monarchy. The crown has already been paraded for the fascination of the unreflecting multitude, with its guileful promises as to the nature and character of that peace which empire will bring!

It is quite immaterial, therefore, whether five hundred men at the North can be found who will concede what Judge Nicholas so emphatically denies that they would or not. No such issue as he represents was presented to them by me. But, to come to real, practical considerations, is it true that five hundred men at the North cannot be found who will sustain the nature and character of our Government as expounded by the Fathers; and under whose administration of it, according to the principles enunciated by them, the country grew and prospered for sixty years as no other country ever did before? Is it true that five hundred men cannot be found there to maintain its complex character as declared by Washington, and expounded by Jefferson, Madison, and Monroe, to say nothing of

others? Is it true that five hundred men cannot be found throughout the Northern States to endorse the following sentiments and earnest utterances of General Jackson, upon the same subject, in his Farewell Address to the people of the United States:

"It is well known that there have always been those among us who wish to enlarge the powers of the General Government; and experience would seem to indicate that there is a tendency on the part of this Government to overstep the boundaries marked out for it by the Constitution. Its legitimate authority is abundantly sufficient for all the purposes for which it was created; and, its *powers being expressly enumerated*, there can be no *justification* for claiming any thing *beyond* them. Every attempt to exercise power beyond *these limits* should be promptly and firmly opposed, for one evil example will lead to other measures still more *mischievous;* and, if the principle of constructive powers, or supposed advantages, or temporary circumstances, shall ever be permitted to justify the assumption of a power *not given by the Constitution*, the General Government will, *before long*, absorb all the powers of legislation, and you will have, in effect, but *one consolidated government.* From the extent of our country, its diversified interests, different pursuits, and different habits, it is too obvious for argument that a *single consolidated government* would be wholly inadequate to watch over and protect its interests; and *every friend of our free institutions* should be always prepared to maintain, *unimpaired and in full vigor, the rights and sovereignty of the States*, and *to confine the action* of the General Government *strictly* to the *sphere* of its appropriate duties."

General Jackson was in no way tainted with "the pernicious dogma of Secession," as I suppose Judge Nicholas will readily admit, whatever he may think of Mr. Jefferson and the Kentucky resolutions of 1798. Are my utterances at all inconsistent with the utterances of General Jackson's solemn warnings, even touching the sovereignty of the several States?

The hint of Judge Nicholas as to the propriety and expediency of such utterances coming from me is duly considered and properly appreciated; but, in reply to all he has said on that point, I have this to say to him: If I were a prisoner, and under arrest, with no hope of "*pardon*," I should not feel relieved from my sense of high moral obligation, to give, though unasked, counsel of safety, if I thought it important, even to

my captors and accusers in a time of imminent danger, whether it was heeded or not.

Paul, while in custody as a *rebel, so-called*, on his way to the judgment-seat of Cæsar, did not hesitate to give warning for the safety of those who had him in charge, as well as for the ship on which they were all embarked. Had his admonition been heeded, a wreck might have been avoided, and notwithstanding "the Centurion believed the master and owner of the ship more than these things which were spoken by Paul," and went on in their course heedless of his warning; yet no sense of its impropriety kept him from again standing "forth in their midst" when all hope of the ship's safety was gone, and warning them once more how only their lives could be saved. This time his advice was taken, and the whole crew were saved, though the ship was lost. Neither shall I abstain, in a case where imminent dangers of much greater magnitude threaten—where not only the future destiny of the whole country, with its liberties, but with these the surest hopes of mankind, are jeoparded—from uttering words of admonition and warning, however unseemly, improper, or even impertinent they may be deemed to be by Judge Nicholas, or ever so many other equally clever and equally well-meaning people.

In conclusion, and in taking my leave of Judge Nicholas, unless it becomes necessary again to make other corrections of matters wherein he may speak of me, etc., I will barely add, (with thanks to you for the courtesy of the use of your columns, which I trust I have not abused), that if it be true that what I *really* said in the former communication, and not what he attributes to me, will have the effect of doing injury at the North or South, as he intimates, it only shows the hopelessness of our condition, and the inevitableness of the common doom of the liberties of both sections. The liberties of the North cannot long survive the loss of those of the South; and if I had supposed the condition of the Northern mind was as it might be inferred to be from his representations of it, I certainly should not have made any such utterances as I did. I should have refrained from making them, however, from no such sense of the impropriety in my doing it as he intimates; but I should

have been governed in withholding them entirely by those promptings of humanity which not only debar all excitements, but rigidly forbid the slightest unguarded movement, or even an audible whisper, that may possibly disturb the quiet repose of a dying friend—one *in extremis*, *in articulo mortis*, past all power of reaction, all effort, all remedy, all hope.

How this really is, the developments of the future will determine. What I have said, however, is upon record; and Judge Nicholas, you, and the country may be assured that these developments will bring with them the realization of the fact that these utterances will remain forever as living truths.

Very respectfully,

Alexander H. Stephens.

ARTICLE III.

THE CURTIS CONTROVERSY ON MR. WEBSTER'S MODIFIED VIEWS.

I.—Hon. George T. Curtis' Review of the Work.

A CONSTITUTIONAL VIEW OF THE LATE WAR BETWEEN THE STATES: Its Causes, Character, Conduct, and Results. Presented in a Series of Colloquies at Liberty Hall. By Alexander H. Stephens. In two vols. Vol. 1.

The author of the book, the title of which is placed at the head of this article, is one of the representatives of a lost and ruined cause. In that cause he has suffered; suffered with heroic fidelity to an idea respecting the nature of the Constitution of the United States. He is a gentleman for whose patriotism and purity of purpose I entertain entire respect. I could not, however prompted, treat otherwise than with tenderness, those whom the dread arbitrament of civil war has stricken down, and whom I believe to have been conscientious in their efforts to establish the Southern Confederacy. I learned long ago to regard the question of the right of State secession from the Union as one on which men could honestly differ from the views that have generally prevailed in the North; and now that the doctrine has been, after every form of forensic discussion, rendered practically obsolete by the terrible trial of arms, I shall be, I trust, the last person in the land to utter a word with intent to injure the feelings of those who stand on the lost side of this great National controversy. But I may be permitted to express the astonishment with which I have read a portion of Mr. Stephens' recent publication, in which he claims that Mr. Webster, in the later years of his life, changed his opinions respecting the nature of the Constitution, and became a convert, or almost a convert, to the views of

State sovereignty, on which the right of State secession from the Union was claimed by Mr. Calhoun and his disciples as a right *under* the Constitution. This suggestion, I venture to say, is a very novel one to Mr. Webster's personal friends in this part of the country. Considering the source from which it comes, and the manner in which it has been put forth, it claims their attention. It ought to be answered by some one. There is no living representative of Mr. Webster's blood of an age to undertake this duty. Of his four literary executors, to whom he confided the care of his name and fame by testamentary and other injunctions, two alone survive. Of these I am one; and circumstances which I need not detail, have devolved it upon me to examine Mr. Stephens' proofs, and to submit to the public the proper refutation of his position in regard to Mr. Webster.

Let it be observed, however, that I enter into no vindication of Mr. Webster's opinions as they were expressed in 1830-'33, and as they have always been understood in this region to have been held to the day of his death. I make no issue with Mr. Stephens or any one else as to the correctness of the doctrine which has, until now, been regarded as the doctrine of Mr. Webster, although I never was able to see how the opposite doctrine is consistent with the facts respecting the establishment of the Constitution and its unquestionable language. But with the main purpose of Mr. Stephens' book I have now nothing to do. In that book he has put forth the assertion that Mr. Webster changed his opinions; and, if this is true, Mr. Webster is really to be cited as an authority for the supposed right of State secession. This assertion, and the proofs on which it is made, I propose to examine, and nothing else.

That I may do no injustice to Mr. Stephens' assertion, I proceed to quote his words. Speaking of the debate in 1833, in which he thinks Mr. Calhoun not only annihilated Mr. Webster, but convinced him that he had been wrong in 1830, Mr. Stephens observes (p. 387):

"The power and force of this speech (Mr. Calhoun's) must have been felt by Mr. Webster himself. He was a man of too much reason and logic

not to have felt it. This opinion I am more inclined to from the fact that he not only did not attempt a general reply to it at the time, but from the further fact that in after-life he certainly, to say the least of it, greatly modified the opinions held by him in that debate."

In the next chapter, Mr. Stephens' interlocutor having called for proofs, he proceeds to give them. He then (p. 405) after citing, as the latest evidence, a speech made by Mr. Webster in 1851, observes:

"That this speech shows a modification of the opinions expressed in his speech of 1833, must be admitted by all. He had grown older and wiser. The speech of 1851 was in his maturer years, after the nature of the Government had been more fully discussed by the men of his own generation than it had been in 1830 and 1833. He was too great a man, and had too great an intellect, not to see the truth when it was presented, and he was too honest and too patriotic a man not to proclaim a truth when he saw it, even to an unwilling people."

The proofs on which Mr. Stephens relies, to show that Mr. Webster in 1851 had reversed the opinions of his whole previous life, and had come to hold the Constitution to be a "compact between Sovereign States," will be fully stated hereafter. Before examining them, however, it will occur, perhaps, to the reader to ask how it happens that Mr. Webster should have reached a change of opinion so extraordinary as to amount to a total renunciation of that which constituted the chief glory of his own great fame, and yet should have given to his countrymen no more distinct notice that he had done so than is to be gained from the evidence on which Mr. Stephens relies. It will certainly be admitted to be true that he thought himself right in 1830, in the celebrated controversy with Mr. Hayne. But this is not all. It is likewise true that the views he then maintained respecting the nature of the Constitution were accepted by a large majority of the nation, of all parties, as a true exposition, and that they were adopted by General Jackson's administration as the basis of its action when it became necessary afterwards to resist the threatened *Nullification* in South Carolina. General Jackson's proclamation of 1832 against the Nullifiers was written by his Secretary of State, Edward Livingston, and it followed, throughout, the doctrine

maintained by Mr. Webster in his reply to Hayne, in 1830. So remarkable was this adoption of Mr. Webster's argument, that popular opinion at that time regarded it as a manifest, but, of course, a very excusable plagiarism. Mr. Webster, when the proclamation was issued, was on his way to Washington, ignorant of what had occurred. At an inn in New Jersey he met a traveller just from Washington. Neither of them was known to the other. Mr. Webster inquired the news. "Sir," said the gentleman, "the President has issued a proclamation against the Nullifiers, taken entirely from Mr. Webster's reply to Hayne." In the course of the ensuing session, and not long after Mr. Webster reached the Capital, it became necessary for the administration to act. Mr. Webster was in the opposition; and, excepting in regard to the integrity of the Union and the just powers of the Government, there was a wide gulf between the administration and him. He was absent from his seat for several days when the Force bill was about to be introduced *as an administration measure.* A portion of General Jackson's original supporters hung back from that issue. At this juncture there was much inquiring among the President's friends in the House as to "where Mr. Webster was." At length a member of General Jackson's cabinet went to Mr. Webster's rooms, told him the nature of the bill about to be introduced, and asked him, as a public duty, to go into the Senate and defend the bill and the President. It is well known to the whole country that Mr. Webster did so; and it is known to me that General Jackson personally thanked him for his powerful aid; that many of the President's best friends afterwards sought to make a union between him and Mr. Webster, and that nothing continued to separate them but an irreconcilable difference of opinion about the questions relating to the currency.

It is, in fact, matter of historical certainty that Mr. Webster's opinions respecting the character of the Constitution, as maintained in 1830, shaped the course of the Government towards Nullification; that they shaped the opinion of the country which rallied to the support of the administration; that he himself, through his whole life, regarded his reply to Hayne as the most important of all his public efforts; and that it was

the one that produced the widest and most enduring impression upon the National intellect. Whether he was right or wrong, it is to him that we are to trace that great body of public convictions which, ten years after he was laid in the tomb, enabled the Government of the United States to draw forth the energies of a people who would never have gone through the late civil war without those convictions, and finally to prevent the threatened disruption of the United States. Mr. Webster was not compelled to witness this sad spectacle; but he foresaw the possibility of its occurrence; and he knew well that, if the issue did come in this terrible form, he had prepared the intellect of his country with that which could alone justify and support the efforts that must be made. He knew always that his own fame was completely identified with the doctrine that regards the Constitution not as *compact* but as a *law;* that in that great postulate he had lived and acted until he had made it plain to all but the people of a section; and that, if this opinion were to be renounced by him, it would be his clear duty to make that renunciation known in the most unequivocal terms. All this every man knows, too, who knows much of the history and feelings of Daniel Webster. Yet we are told that, in his "maturer years," he changed his opinions on this subject. Why, then, did he not *say* that he had changed? Mr. Stephens gives him credit for moral grandeur of character. The credit is his due. He was never afraid of admitting that he had modified his opinions. His love of truth was more powerful than his love of himself. But I think I can tell Mr. Stephens why he did not inform us that he had changed these opinions. The reason is because he had *not* changed them; because they were inseparable from the very structure of his intellect, and therefore could not be renounced. He who wishes to see whether this is true, must compare the intellectual natures and mental characteristics of the two great antagonists, Webster and Calhoun, and must observe how their respective modes of reasoning led to conclusions diametrically opposite.

Mr. Stephens speaks of a change that came over Mr. Webster in his "maturer years." In 1830, when he electrified the country by his reply to Hayne, he was forty-eight years of age.

In 1833, when the debate with Mr. Calhoun occurred, he was fifty-one. In 1851, when Mr. Stephens thinks him more "mature," and the subject had been "more fully discussed," he was sixty-nine. He died on the 24th of October, 1852, in his seventy-first year.

I am not aware that at any period of his life, Mr. Webster exhibited any material *abatement* of his intellectual powers. In the judgment of those who saw him most frequently and observed him most closely, there was less change in him from the age of fifty to the age of seventy than is common in men of intellectual pursuits. He himself was sometimes observed, during the last ten years of his life, when called upon to make some particular and unusual effort, to be a little anxious concerning the comparisons that men might make of him with what he had formerly been. No one, however, would say that the speech of the 7th March, 1850, exhibits any decay of intellectual strength, or that the famous "Hulsemann letter" is less vigorous than any of his former productions.

On the other hand, if we were to look for the period when his powers of all kinds were in their fullest vigor and highest development, we should unhesitatingly place it, in his case, as in that of most men, between the ages of forty and sixty. Mr. Stephens makes a great mistake, too, as it seems to me, in supposing that the nature of the Government had been more fully discussed after 1833, and before 1851, than it had been down to the time when Nullification was encountered. Nothing of any importance had been added to the Southern side of the controversy after 1833, nor has there been any thing new said or written on that side of the question since Mr. Hayne and Mr. Calhoun left it in their arguments of 1830 and 1833. If Mr. Webster ever thought that he had occasion to revise the subject, he certainly had nothing new to examine after 1833, for Mr. Calhoun had then exhausted his own side of the question, in one of the greatest arguments he ever made, and all that he ever said afterwards was but a repetition of himself. Moreover, it would be an error to imagine that Mr. Webster, in 1830, came to the discussion of this great question as to something which he had not previously studied. The debate

itself of that year sprang up suddenly; but Mr. Webster's preparation for it had been made long before the occasion arose, and he could have made the reply to Hayne just as well as he did make it, at any time during the preceding ten years. To him there was no side of this question that needed to be examined when he was called upon to encounter the doctrine of Nullification; and the proof of this is, that the second speech on Foote's resolution which contains the development of his doctrine respecting the nature of the Government and his reply to the whole of Mr. Hayne's argument, was made from a brief prepared in a single night. This brief, covering but a few pages of ordinary letter paper, is now in my possession.

There is, too, a singular error of Mr. Stephens on which I desire to make a few observations before I quote his proofs of Mr. Webster's change of opinions. He seems to imagine that Mr. Webster was staggered even in 1833, and begun then to entertain doubts, in consequence of the "crushing and extinguishing" speech of Mr. Calhoun. He says, without hesitation, that Mr. Webster made "no rejoinder" to Mr. Calhoun, but merely explained how he had used the term "constitutional compact" in 1830, and attempted to parry one or two of the blows "*but never made any set reply or rejoinder.*" "Mr. Calhoun stood master of the arena" (p. 387). Now the facts are these:

The autumn of 1832 and the winter of 1833 witnessed the crisis of "Nullification." The revenue laws of the United States had been prostrated in South Carolina by a system of State law which directly obstructed the collection of any revenue whatever. It had become necessary for the President of the United States to act; and that President was Andrew Jackson. His proclamation warned the nullifiers that their acts were acts of "treason;" and when Congress assembled in December, he asked for the passage of a law adapted to the exigency, to enable him to enforce the collection of the revenue. It became known, very soon, that Mr. Webster intended to support the President in this course, notwithstanding their political differences on almost all other subjects. Mr. Calhoun saw what was impending, and after the introduction of the

Force bill he offered in the Senate what he called a "plea in bar," consisting of his celebrated resolutions on the nature of the Union, embodying, in very terse and perspicuous language, the doctrine of the right of Nullification as a constitutional remedy. On the 11th of February, Mr. Clay announced in the Senate his purpose to introduce his Compromise bill to modify the tariff. This bill was introduced and was pending at the same time with the Force bill. On the 15th of February, the Force bill being under consideration, Mr. Calhoun commenced the great speech in which he resisted the passage of that bill, developed his views on the nature of the Constitution and the right of State Nullification, as embodied in his resolutions, and explained the attitude taken by South Carolina. The doctrine of this very able speech maintained the Union to be a confederacy of sovereign States, in contradistinction to a consolidated government. Its argument was that the States, being sovereign and having reserved to themselves all powers not granted to the general government, had reserved, among others, the power of judging of any infractions of the "Federal compact;" which power, from the necessity of the case, Mr. Calhoun said could exist nowhere else. He maintained, therefore, that when a State, in its sovereign capacity, has solemnly pronounced an act of Congress to be unwarranted by the Federal Constitution, the paramount allegiance of her citizens is due to *her* authority, and she stands between the citizen and the State to protect him from the consequence of resistance. As an exposition of the doctrines of nullification, this speech was a much abler one than that of Mr. Hayne, which Mr. Webster answered in 1830. But let it be observed that this is not *the* speech which Mr. Stephens thinks annihilated Mr. Webster, and to which the latter "made no rejoinder." It was, however, a speech which contained the development of Mr. Calhoun's whole doctrine, and it was the one which Mr. Webster answered as soon as Mr. Calhoun had concluded. The answer stands in the third volume of Mr. Webster's works under the title "The Constitution not a compact between sovereign States." It comprehended and maintained the following propositions:

1. That the Constitution of the United States is not a league, confederacy, or compact between the people of the several States in their sovereign capacities; but a government proper, founded on the adoption of the people, and creating direct relations between itself and individuals.

2. That no State authority has power to dissolve these relations; that nothing can dissolve them but revolution; and that, consequently, there can be no such thing as secession without revolution.

3. That there is a supreme law, consisting of the Constitution of the United States, and acts of Congress passed in pursuance of it, and treaties; and that, in cases not capable of assuming the character of a suit in law or equity, Congress must judge of, and finally interpret, this supreme law so often as it has occasion to pass acts of legislation; and in cases capable of assuming, and actually assuming, the character of a suit, the Supreme Court of the United States is the final interpreter.

4. That an attempt by a State to abrogate, annul, or nullify an act of Congress, or to arrest its operation within her limits, is a direct usurpation on the just powers of the general government, and on the equal rights of other States; a plain violation of the Constitution, and a proceeding essentially revolutionary in its character and tendency.

On the 26th of February, Mr. Calhoun called up his own resolutions, and commenced an elaborate reply to Mr. Webster, reasserting the doctrines of State nullification. Whoever will examine this speech and compare it with that which Mr. Calhoun made on the 15th, will see that although the two are of about equal length, the latter one advanced little in the way of argument which is not contained in the former, to which Mr. Webster had already replied. By this time the discussion turned in a considerable degree on the sense in which the speakers had used certain terms: and although Mr. Calhoun reasserted his own argument at length, he in fact added to it nothing that was important, although he restated it in a very clear, perspicuous, and logical method. If Mr. Webster was, or ought to have been "annihilated," or "convinced," those conditions ought to have happened to him after hearing Mr.

Calhoun's speech of the 15th. But Mr. Webster's answer to that speech—made immediately, it is true—does not read as if he had been impressed with the soundness of Mr. Calhoun's views, and his rejoinder to Mr. Calhoun's speech of the 26th shows quite plainly that, *in his own judgment*, he was *then* called upon to say but little more. That little, however, he put into a "nutshell." As the rejoinder is not long, and as it is not repeated in Mr. Webster's works, I quote it entire, that the reader may judge whether Mr. Calhoun had convinced Mr. Webster that this Union is a "compact between sovereign States."

"As soon as Mr. Calhoun had concluded, Mr. Webster rose in reply. He said that, having already occupied so much of the time of the Senate on the general subject, he should not do more than to make a very few observations in reply to what the honorable member from South Carolina had now advanced. 'The gentleman', said Mr. W., 'does me injustice in suggesting the possibility that any remarks of mine could have been made for the purpose of obtaining favor in any quarter, by an appearance of hostility to him.'

"[Mr. Calhoun rose and said he had only suggested it as a matter of possibility.]

"'I hope it is not even possible,' continued Mr. W., 'that my support or opposition of important measures should be influenced by considerations of that kind. Between the honorable member and myself personal relations have always been friendly. We came into Congress now near twenty years ago, both ardent young men; and, however widely we may have differed at any time on political subjects, our private intercourse has been one of amity and kindness.'

"[Mr. Calhoun rose and said these remarks were just such as he himself had intended to make.]

"'The honorable member considers my remarks on his use of the phrase "constitutional compact," as not well founded, and says he has my own authority against myself. He quotes from my speech in 1830. But I did not on that or any occasion call the Constitution a constitutional compact. In the passage to which he refers I was speaking of one part of the agreement on which the Constitution was founded, viz., the agreement that the Slaveholding States should possess more than an equal proportion of Representatives. That, I observed, was matter of compact, sanctioned by the Constitution; it was an agreement which, being adopted in the Constitution, may be well enough called a constitutional compact; but that is not equivalent to saying that the Constitution of the United States is nothing but a constitutional compact between sovereign States.

The gentleman must certainly remember that my main object on that occasion was to establish the proposition, stated in the same speech, that the Constitution was not a compact between the States, but a constitution established by the people, with a government founded on popular election, and directly responsible to the people themselves. The honorable gentleman attempts also to find an authority for his use of the word "accede." He says the same word was used by General Washington, in speaking of the adoption of the Constitution by North Carolina. It was so, and it is used by the biographer of Washington, also, in reference to the same occurrence; and although both, probably, adopted the same phrase from the popular language of the day, yet the language in that case was not, perhaps, improper. By the adoption of the Constitution, by nine States, the old confederacy was effectually dissolved. North Carolina not having adopted it until after the government went into operation, was out of the Union. She had, at that moment, no distinct connection with other States. The old Union was broken up, and she had not come into the new. There was propriety, therefore, perhaps, in calling her adoption of the Constitution an accession. Yet, when she afterward adopted the Constitution, she used the same terms of ratification as the other States. "Accede" is unknown to all those ratifications, and to the Constitution itself. But the honorable gentleman insists that he can change that phraseology of his resolutions, so as to avoid my objections, and yet maintain their substantial sense and import. He says his first resolution may stand thus:'

"'*Resolved*, That the people of the several States composing these United States are united as parties to a compact, under the title of the Constitution of the United States, which the people of each State ratified as a separate and sovereign community, each binding itself by its own particular ratification; and that the Union, of which the said compact is the bond, is a union between the States ratifying the same.'

"This is a change, it is true, but it is a mere verbal change. It rejects certain words, but adopts their exact synonyms. In his resolution he calls the Constitution a 'constitutional compact.' In the amended form which he now suggests, he calls it a 'compact, under the title of the Constitution.' These are just the same thing. Both call it a compact, and a compact between sovereign communities, and in both the attempt is to make the Constitution not one substantive thing, but merely the qualification of something else. Now, sir, the Constitution does not call itself a compact of any kind; the people did not call it such when they ratified it. No State said 'We, as a sovereign community, accede to a Constitutional compact;' or, 'We, as a sovereign community, ratify a compact under the title of a Constitution.' No State said one word about compact; no State said one word about acting as a sovereign community. On the contrary, in each and every State the language is, that the conventions,

in the name and by the authority of the people, ratify this Constitution or frame of government. Neither of the resolutions, therefore, of the honorable member, nor this amended form of it, follows the official and authentic language applied to the transaction to which it refers. I again say, if he will follow that language, if he will state accurately what was done, and then state his proposed inference, that inference will be out of all sight from his premises. Let him say nothing of compact, because the people said nothing of it; let him not assert that the people of the States acted as sovereign communities, because they have not said so. Let him describe what the people did in their own language. It will then stand that the people ratified this Constitution or frame of government.

"Now, sir, the mere substitution of this just and true phraseology strikes away the whole foundation of the gentleman's argument. He cannot stand a moment except on the ground of a compact between sovereign communities. Compact, therefore, and such a compact, must keep its place in his first resolution, or else his chain of reasoning breaks in the first link. He is, therefore, driven to the necessity of assuming what cannot be proved, and of giving a history of the formation of this Constitution essentially different from its true history. He is compelled to reject the language of the Constitution itself, and to reject also the language used by the people of every one of the States when they adopted it, and to lay the corner-stone of his whole argument on mere assumption. The honorable gentleman does not understand how the Constitution can have a compact or consent for its basis, and yet not be a compact between sovereign States. It appears to me the distinction is broad and plain enough. The people may agree to form a government; this is assent, consent, or compact; this is the social compact of European writers. When the government is formed, it rests on this assent of the governed; that is, it rests on the assent of the people. The whole error of the gentleman's argument arises from the notion that the people, of their own authority, can make but one government, or that the people of all the States have not united, and cannot unite, in establishing a Constitution, connecting them together directly, as individuals, united under one government. He seems unwilling to admit, that while the people of a single State may unite together, and form a government for some purposes, the people of all the States may also unite together and form another government for other purposes. But what he will not thus admit appears to me to be the simple truth, the plain matter of fact, in regard to our political institutions. The honorable gentleman thinks, sir, that I overlooked a very important part of the Constitution, favorable to his side of the question. He says it is declared in the seventh article that the ratification of the conventions of nine States shall be sufficient for the establishment of the Constitution between the States ratifying the same. If I have overlooked this provision, sir, it is because it appears to me not to have that bearing on the question which the honorable gentleman supposes. The

honorable member has said, in one of his publications, that the word 'States' as used in the Constitution, sometimes means the States, in their corporative capacities or governments; sometimes it means their territory, merely; and sometimes it means the people of the States. This is very true; and it is perfectly clear, that in the clause quoted, the word means the people of the States. The same clause speaks of the conventions of States; that evidently means conventions of the people of the States; else the whole provision would be absurd. All that this part of the Constitution intended was simply to declare that, so soon as the people of nine States should adopt and ratify it, it should, as to these States, go into operation. The gentleman has concluded, sir, by declaring again, that the contest is between power on one side and liberty on the other—and that he is for liberty. All this is easily said. But what is that liberty whose cause he espouses? It is liberty given to a part to govern the whole. It is liberty, claimed by a small minority, to govern and control the great majority. And what is the power which he resists? It is the general power of the popular will; it is the power of all the people, exercised by majorities, in the Houses of the Legislature, in the form of which all free governments exercise power. Mr. President, turn this question over, and present it as we will—argue upon it as we may—exhaust upon it all the fountains of metaphysics—stretch over it all the meshes of logical or political subtlety—it still comes to this: Shall we have a general government? Shall we continue the Union of the States under a government instead of a league? This is the upshot of the whole matter; because, if we are to have a government, that government must act like other governments, by majorities, it must have this power, like other governments, of enforcing its own laws and its own decisions; clothed with authority by the people, and always responsible to the people, it must be able to hold on its course unchecked by external interposition. According to the gentleman's view of the matter, the Constitution is a league; according to mine, it is a regular popular government. This vital and all-important question the people will decide, and in deciding it, they will determine whether by ratifying the present Constitution and frame of government, they meant to do nothing more than to amend the articles of the old confederation."

But it is time to quote the whole of Mr. Stephens' proofs of Mr. Webster's change of opinions. They consist of

1. The assumption that Mr. Webster did not and could not reply to Mr. Calhoun's argument of 1833, and that he must have felt it to be unanswerable.

2. An argument made by Mr. Webster in 1839, in the Supreme Court of the United States, in the case of The Bank of Augusta *vs.* Earle.

3. An opinion given by Mr. Webster to the Barings in 1839, respecting the capacity of the States to contract debts.

4. A speech made by Mr. Webster at Capon Springs in Virginia, June 28, 1851.

Every thing relating to the specific sources of proof is now before me. The 1st, 2d, and 3d are embraced in Mr. Webster's published works. The speech at Capon Springs is not included in his works, but I have a pamphlet copy of it before me, which once belonged to him. The specifications, then, may be examined in their order.

1.—*The Debate of* 1833.

Whether Mr. Webster must have felt Mr. Calhoun's speech to be unanswerable must be judged of by the reader after examining the whole debate. Mr. Stephens may think that Mr. Webster's rejoinder was insufficient; but I do not understand how he is entitled to say that Mr. Webster made no rejoinder, or how it was that "Mr. Calhoun remained master of the arena," through any failure of Mr. Webster to continue standing on his own ground. A rejoinder does not necessarily embrace a full repetition of the original argument. As a reässertion of one's position, its contents depend on one's judgment of the necessity for saying more than one has already said; and when the question is, not whether a speaker had the best of the argument, but whether his rejoinder shows that he felt himself to have been floored by his opponent, we must enter into his own estimate of what was required to be said in that rejoinder. Having already given the history of that great debate it is unnecessary for me to say more concerning the success with which Mr Webster maintained his position.

2.—*The Argument in the Bank Case.*

Mr. Webster's argument in the case of The Bank of Augusta *vs.* Earle, in 1839.

Mr. Stephens makes the following quotation from Mr. Webster's argument, the meaning of which he appears to have misapprehended.*

* I preserve the italics as Mr. Stephens has made them.

"'But it is argued,' said Mr. Webster, 'that though this law of comity exists as between independent nations, it does not exist between the States of this Union. That argument appears to have been the foundation of the judgment in the Court below.

"'In respect to this law of comity, it is said, States are not Nations; they have no National Sovereignty; a sort of residuum of Sovereignty is all that remains to them. The National Sovereignty, it is said, is conferred on this Government, and part of the municipal Sovereignty. The rest of the municipal Sovereignty belongs to the States. Notwithstanding the respect which I entertain for the learned judge who presided in that Court, I cannot follow in the train of his argument. I can make no diagram, such as this, of the partition of national character between the State and General Governments. I cannot map it out, and say, so far is national and so far municipal; and here is the exact line where one begins and the other ends. We have no second La Place—and we never shall have—with his "Mécanique Politique," able to define and describe the orbit of each sphere in our political system with such exact mathematical precision. There is no such thing as arranging these governments of ours by the laws of gravitation so that they will be sure to go on forever without impinging. These institutions are practical, admirable, glorious, blessed creations. Still they were, when created, experimental institutions: and if the convention which framed the Constitution of the United States had set down in it certain general definitions of power, such as have been alleged in the argument of this case, and stopped there, I verily believe that in the course of fifty years which have since elapsed, this government would have never gone into operation.

"'Suppose that this Constitution has said, in terms of the language of the Court below, all National Sovereignty shall belong to the United States; all municipal sovereignty to the several States. I will say, that however clear, however distinct, such a definition may appear to those who use it, *the employment of it in the Constitution could only have led to utter confusion and uncertainty.* I am not prepared to say that the States have no National Sovereignty. The laws of some of the States—Maryland and Virginia, for instance—provide punishment for treason. The power thus exercised is certainly not municipal. Virginia has a law of alienage; that is a power exercised against a foreign nation. Does not the question necessarily arise, when a power is exercised concerning an alien enemy—enemy to whom? The law of escheat, which exists in all the States, is also the exercise of a great sovereign power.

"'The term "Sovereignty" does not occur in the Constitution at all. The Constitution treats States as States, and the United States as the United States; and, by a careful enumeration, declares all the powers that are granted to the United States, and all the rest are reserved to the States. If we pursue, to the extreme point the powers granted, and the

powers reserved, the powers of the General and State governments will be found, it is to be feared, impinging, and in conflict. Our hope is, that the prudence and patriotism of the States, and the wisdom of this government, will prevent that catastrophe. For myself, I will pursue the advice of the court in Deveaux's case, I will avoid nice metaphysical subtilities, and all useless theories; *I will keep my feet out of the traps of general definition;* I will keep my feet out of all traps; *I will keep to things as they are*, and go no further to inquire what they might be, if they were not what they are. The States of this Union, as States, are subject to all the voluntary and customary laws of Nations.'

"[Mr. Webster here referred to and quoted a passage from Vattel (page 61), which, he said, clearly showed that States connected together, as are the States of this Union, must be considered as much component parts of the law of nations as any others.]

"'If, for the decision of any question, the proper rule is to be found in the law of nations, that law adheres to the subject. It follows the subject through, no matter into what place, high or low. You cannot escape the law of nations in a case where it is applicable. The air of every judicature is full of it. It pervades the courts of law of the highest character, and the court of piepoudre; aye, even the constable's court. It is part of the universal law. It may share the glorious eulogy pronounced by Hooker upon law itself; that there is nothing so high as to be beyond the reach of its power, nothing so low as to be beneath its care. If any question be within the influence of the law of nations, the law of nations is there. If the law of comity does not exist between the States of this Union, how can it exist between a State and the subjects of any foreign sovereignty?'"

Before introducing this extract, Mr. Stephens makes the extraordinary observation that "in this case the nature of the general government and the nature of the State government, in their relations to each other, came up for adjudication." If Mr. Stephens means that there was any thing in this case which presented for adjudication the question of State sovereignty, that lies at the foundation of the doctrine of *State Secession from the Union*, or that the decision affords any color for that doctrine, he is quite mistaken. The question in the case which led to the course of reasoning embraced in the extract from Mr. Webster's argument was simply whether a corporation created by one State can make a valid contract in another State and can maintain a suit upon it in the courts of that other State. No denial of this capacity can be maintained,

except by showing that the States of this Union are not bound as between themselves by the comity of nations, which, by the law of nations, permits the citizens of the different sovereignties to contract and to sue in each other's dominions in the absence of any prohibitory law or declared prohibitory policy of the State where the right is claimed. Of course, in order to make the comity of nations, in this respect, applicable to the States of this Union in their relations with each other, it is necessary to regard each State as, for certain purposes, a nation; or, in other words, to regard it as a *sovereign* State; for such a State alone can be affected by the law of nations, as it exists when not curtailed by the sovereign will, or can declare by legislation or by its public policy that it does not mean to be bound by a particular rule of that law. But neither Mr. Webster nor any one else, in claiming that the States are sovereign in respect to their liability to be affected by the voluntary law of nations, in their relations to the citizens of other States, in matters of property, thereby admits that they are sovereigns in respect to their capacity to withdraw from the Union. It is remarkable that Mr. Stephens should have confounded these two things which are as wide asunder as the poles. When did Mr. Webster ever deny that the States are sovereign in respect to all those political powers which are not conferred on the general government? He did not deny this in 1830 or 1833, and he had no new views to acquire or to express upon it in 1839. It is just as much a fixed doctrine in the Webster school of constitutional law that the States are sovereign States as it is in the school of Mr. Calhoun. But the question is, sovereign as to what? That they are sovereign in respect to the power of declaring what contracts may be made within their limits, or what remedies may be pursued in their courts, all will agree; and a State being to this extent a nation, Mr. Webster argued that it is bound by the comity of nations to permit the citizens of other States to contract and to sue in its jurisdiction; and so the court held. But what has all this to do with that other claim of sovereignty, which makes it competent for a State, as a constitutional right resulting from the nature of the Union, to break up the Union by secession? The two things can be

connected only by assuming that he who calls the States sovereign for some purposes must of necessity so regard them for all other purposes. I know that it has always been so assumed by Mr. Calhoun and his followers, whose cardinal doctrine has been that sovereignty is indivisible. But this was never Mr. Webster's doctrine; and therefore when he argued that as to regulating the right to contract and to sue within its own jurisdiction a State is a nation, and is bound by the comity of nations, he modified no previous opinion respecting the final and irrevocable grant of political powers which he had always maintained was made by the States when they ratified the Constitution of the United States.

I presume that Mr. Webster would have been very much astonished if, on the argument of this case, one of his opponents had risen and said, "So, then, sir, it appears that you have modified your opinions about the nature of the General Government, for you have distinctly said that the States are nations; that they are sovereign; that the Constitution treats the States as States, and if they are *sovereign* States, you must have changed your views as you expressed them in the Senate in 1830 and 1833." I fancy that Mr. Webster would have answered thus:

"When did I ever deny that the States are independent political communities, with full attributes of sovereignty in respect to all the powers of government not embraced in the Constitution of the United States, and not therein expressly restricted? Be pleased to observe, sir, that the idea that a State cannot part with a portion of its sovereignty and *remain* a State may be yours, but it is not mine. It has always been my doctrine, and is still, that the States did this very thing when they ratified the Constitution; that they parted with a portion of their sovereignty and yet *remained States.*"

Mr. Stephens may say this is impossible, but he has no ground for saying that Mr. Webster ever regarded it as impossible. His argument in the bank case could have been made on the same day with his reply to Hayne or his reply to Calhoun, and no man could have found the smallest departure from what he had previously maintained.

3.—*The Opinion given to the Barings in* 1831.

In the summer of 1839 Mr. Webster was in England. It was the era of "repudiation." Several of the States proposed to refuse payment of the bonds which they had issued for railroads and other improvements. The firm of Baring Brothers, in London, representing the holders of a great amount of these securities, aware of the misconceptions prevailing in Europe concerning the nature of our political systems, and also of the grounds taken by some of the State governments, in excuse for their repudiation, applied to Mr. Webster for an opinion on the question, "Whether the Legislature of one of the States has legal and constitutional power to contract loans at home and abroad?" To a question so plain to every American constitutional lawyer there could be, of course, but one answer; and it seems extraordinary that Mr. Stephens should have found in the answer given by Mr. Webster any views of State sovereignty different from those which Mr. Webster had always maintained. It would be difficult to describe our political system with greater precision or more correctly than Mr. Webster stated it in this opinion. Having repeated the question propounded to him, he said:

"To this I answer that the Legislature of a State has such power, and how any doubt could have arisen on this point it is difficult for me to conceive. Every State is an independent, sovereign, political community, *except* in so far as certain powers, which it might otherwise have exercised, have been conferred on a General Government established under a written Constitution and exercising its authority over the people of *all* the States. This General Government is a limited Government. Its powers are specific and enumerated. All powers not conferred on it still remain with the States or with the people. The State Legislatures, on the other hand, possess all usual and ordinary powers of government, subject to any limitations which may be imposed in their own Constitutions, and with the exception, as I have said, of the operation on those powers of the Constitution of the United States."

Is there any thing in this inconsistent with the doctrine maintained by Mr. Webster in 1830 and 1833? If there is any thing ever uttered by Mr. Webster which does *not* sanction the idea of State independence of the authority of the General

Government as that authority is established by the Constitution of the United States, it is this opinion, given to the Barings in 1839. Mr. Stephens may think that it is impossible for any one to speak of the States as "independent, sovereign, political communities," without conceding what is claimed by Mr. Calhoun's theory of our system. But he must remember when Mr. Webster imputed these attributes to the States, he limited them in the same sentence by an *exception*, which comprehends the whole doctrine of Mr. Webster's previous life, namely, that the powers of the States are circumscribed in certain particulars by a general Constitution, which exercises a certain authority over the people of ALL the States. But as this Constitution contains no limitation on the powers of the States to make loans for their own purposes—it is strictly correct to speak of the States as "independent, sovereign, political communities," in this and many other respects. It all comes back to the question whether the sovereign powers of a people are divisible, so that a part can be granted irrevocably and a part can be retained. In the Calhoun theory this is regarded as impossible; in the Webster theory it is regarded as perfectly practicable. But because the disciples of the former hold political sovereignty to be in itself indivisible, they are not warranted in imputing to Mr. Webster an adoption of their opinions, for the reason that he uniformly treated the States as independent political communities, *except* in so far as they are restrained or limited by the powers which they granted to the General Government when they ratified the Constitution of the United States.

4.—*The Speech made by Mr. Webster in June*, 1851, *at Capon Springs, in Virginia.*

The citation from Mr. Webster's speech at Capon Springs, as proof of his "change of views as to the Constitution being a compact between the States," is made by Mr. Stephens in the following manner:

"But, besides all this, as a further proof of Mr. Webster's change of views as to the Constitution being a compact between the States, I cite you

to a later speech made by him at Capon Springs, in Virginia, on the 28th June, 1851. Here it is. In this he says:

"'The leading sentiment in the toast from the Chair is the Union of the States. The Union of the States! What mind can comprehend the consequences of that Union, past, present, and to come? The Union of these States is the all-absorbing topic of the day; on it all men write, speak, think, and dilate, from the rising of the sun to the going down thereof. And yet, gentlemen, I fear its importance has been but insufficiently appreciated.'"

"Further on he says:

"'How absurd is it to suppose that when different parties enter into a compact for certain purposes, either can disregard any one provision, and expect, nevertheless, the other to observe the rest. I intend, for one, to regard and maintain, and carry out, to the fullest extent, the Constitution of the United States, which I have sworn to support in all its parts and all its provisions. It is written in the Constitution: "No person held to service or labor in one State, under the laws thereof, escaping into another shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

"'That is as much a part of the Constitution as any other, and as equally binding and obligatory as any other on all men, public or private. And who denies this? None but the abolitionists of the North. And pray what is it they will not deny? They have but the one idea; and it would seem that these fanatics at the North and the secessionists at the South are putting their heads together to devise means to defeat the good designs of honest and patriotic men. They act to the same end and the same object, and the Constitution has to take the fire from both sides.

"'I have not hesitated to say, and I repeat, that if the Northern States refuse, wilfully and deliberately, to carry into effect that part of the Constitution which respects the restoration of fugitive slaves, and Congress provide no remedy, the South would no longer be bound to observe the compact. A bargain cannot be broken on one side and still bind the other side. I say to you gentlemen in Virginia, as I said on the shores of Lake Erie and in the city of Boston, as I may say again in that city or elsewhere in the North, that you of the South have as much right to receive your fugitive slaves, as the North has to any of its rights or privileges of navigation and commerce.'

"Again, said he: 'I am as ready to fight and to fall for the Constitutional rights of Virginia as I am for those of Massachusetts.'

"In this speech Mr. Webster distinctly held that the Union was a Union of States. That the Union was founded upon a compact. And that a compact broken on one side could not continue to bind the other."

As a historian, Mr. Stephens is singularly unfortunate. He cites Mr. Webster for the purpose of proving that he had come, in 1851, to regard the *Constitution* as a *compact* between the States, yet he overlooks the passages in the same speech which show that he did *not* so regard it. He refers to the sentiment uttered by Mr. Webster, that a compact broken on one side

could not continue to bind the other, and yet he omits the contemporary evidence which shows *in what sense and by what means* Mr. Webster supposed the compact could be broken by "the other side." Let the whole truth, therefore, be told.

Every one will recollect that when the compromise measures of 1850 were before Congress, the passage of the new fugitive slave law was resisted, on the ground that the clause of the Constitution, which required the extradition, was a mere treaty or compact between the States; that if the Northern States did not choose to execute it, but preferred to break the compact, there was no remedy, or none that Congress could interpose; and that, as the Northern States had come to regard this treaty as *immoral*, no law on the subject ought to be voted for by their representatives in Congress. These sentiments were rife throughout the North after the act of 1850 was passed, and Mr. Webster had occasion to refer to them in a great many popular addresses in 1850, 1851, and 1852. In substance, this Northern doctrine was identical with the Southern doctrine which maintained the right of secession from the Union; for the two concurred in imputing to the *Constitution* the character of a *compact* between the States, although the Northern advocates of this view applied it to but *one* provision of the Constitution, while the Southern politicians applied it to the whole. During the entire period from 1850 to a time long after the death of Mr. Webster, the right of secession was much discussed in the South; and in speaking at Capon Springs, he had occasion to consider the Southern and the Northern *phases* of a kindred doctrine, and to show how they both led to *revolution*, how there is no such thing as constitutional and peaceable *secession*, and how, consequently, the Constitution is not to be regarded as a mere compact. Now, it is proper that what Mr. Webster actually did say at Capon Springs should be brought forward, from a report published in a pamphlet at Washington, which I have reason to know had his sanction. The fact is that he made two speeches at the same dinner, which was given to him by the inhabitants of the surrounding country for fifty miles around. In the first speech he said, in conclusion:

"GENTLEMEN—I am aware that the respect paid to me to-day is in consequence of my support of the adjustment measures of the last Congress. Although I wished to raise no false alarm, nor create any fears, yet I believed in my conscience that a crisis was at hand—a dangerous, a fearful crisis; and I resolved to meet it at all hazards, and with whatever strength I possessed. A true patriot, like a faithful mariner, must be prepared for all exigencies. In the words of the old song:

———'He is born for all weathers,
Let the winds blow high or blow low;
His duty keeps him to his tethers,
And where the gale drives he must go.'

(Applause.)

"The support of the Union is a great practical subject, involving the prosperity and glory of the whole country, and affecting the prosperity of every individual in it. We ought to take a large and comprehensive view of it; to look to its vast results, and to the consequences which would flow from its overthrow. It is not a mere topic for ingenious disquisition, or theoretical or fanatical criticism. Those who assail the Union at the present day seem to be persons of one idea only, and many of them of but half an idea. (Applause.) They plant their batteries on some useless abstraction, some false dogma, or some gratuitous assumption. Or, perhaps, seeking for some spot, or speck, or blot, or blur, and if they find any thing of this kind, they are at once for overturning the whole fabric. And, when nothing else will answer, they invoke religion and speak of a higher law. Gentlemen, this North Mountain is high; the Blue Ridge higher still; the Alleghany higher than either; and yet this higher law ranges farther than an eagle's flight above the highest peak of the Alleghany. (Laughter.) No common vision can discern it; no conscience, not transcendental and ecstatic, can feel it; the hearing of common men never listens to its highest behests; and, therefore, one should think it is not a safe law to be acted on in matters of the highest practical moment. It is the code, however, of the fanatical and factious abolitionists of the North. The secessionists of the South take a different course of remark. They are learned and eloquent; they are animated and full of spirit; they are high-minded and chivalrous; they state their supposed injuries and causes of complaint in elegant phrases and exalted tones of speech. But these complaints are all vague and general. I confess to you, gentlemen, that I know no hydrostatic pressure strong enough to bring them into any solid form in which they could be seen or felt. (Laughter and applause.) They think otherwise, doubtless. But, for one, I can discern nothing real or well-grounded in their complaints. If I may be allowed to be a little professional, I would say that all their complaints and alleged grievances are like a very insufficient plea in the law; they are bad on general demurrer for want of substance. (Loud laughter.) But

I am not disposed to reproach those gentlemen, or to speak of them with disrespect. I prefer to leave them to their own reflections. I make no arguments against resolutions, conventions, secession speeches, or proclamations. Let these things go on. The whole matter, it is to be hoped, will blow over, and men will return to a sounder mode of thinking. But one thing, gentlemen, be assured of—the first step taken in the programme of secession, which shall be an actual infringement of the Constitution or the laws, will be promptly met. (Great applause.) And I would not remain an hour in any Administration that should not immediately meet any such violation of the Constitution and law effectually, and at once. (Prolonged applause.) And I can assure you, gentlemen, that all those with whom I am at present associated in the Government entertain the same decided purpose. (Renewed applause and cheers.) And now, gentlemen, let me advert to a cheering and gratifying occurrence. Let me do honor to your great and ancient commonwealth of Virginia. Let me say that, in my opinion, the resolutions passed by her Legislature at the last session, in which some gentlemen now present bore a part, have effectually suppressed, or greatly tended to suppress, the notion of separate governments and new confederacies. (Great applause.) All hopes of disunion, founded upon the probable course of Virginia, are dissipated into thin air. (Cheers.) An eminent gentleman in the Nashville Convention ejaculated: 'Oh, that Virginia were with us! If Virginia would but take the lead in going out of the Union, other Southern States would cheerfully follow that lead.' Ah, but that 'if' was a great obstacle. (Laughter.) It was pregnant with important meaning. 'If Virginia would take the lead.' But who, that looked for any consistency in Virginia, expected to see her leading States out of the Union, since she took such great pains, under the counsels of her ablest and wisest men, to lead them into it? (Applause.) Her late resolutions have put a decided negative upon that 'if,' and the country cordially thanks her for it. Fellow-citizens, I must bring these remarks to a close. Other gentlemen are present to whom you expect to have the pleasure of listening. (Cries of 'Go on!') My concluding sentiment is: The Union of the States; may those ancient friends, Virginia and Massachusetts, continue to uphold it so long as the waves of the Atlantic shall beat on the shores of the one, or the Alleghanies remain firm on their bases in the territories of the other!"

He was again called up by a Democratic gentleman, who expressed his concurrence in all that Mr. Webster had said in his previous remarks, although he had long differed from him on all other questions of public policy. In the second speech Mr. Webster said:

"Whatever may have been the differences of opinion which have heretofore existed between the Democratic and Whig parties on other subjects,

they are now forgotten, or at least have become subordinate, and the important question that is now asked is, 'Are you a Union man?' (Great applause.) The question at this time is, the Union, and how we shall preserve its blessings for the present, and for all time to come. To maintain that Union, we must observe, in good faith, the Constitution and all its parts. If the Constitution be not observed in all its parts, but its provisions be deliberately and permanently set aside in some parts, the whole of it ceases to be binding; but the case must be clear, flagrant, undeniable, and in a point of vital interest. In short, it must be such as would justify revolution, for, after all, secession, disruption of the Union, or successful nullification are but other names for revolution. Where the whole system of laws and government is overthrown, under whatever name the thing is done, what is it but revolution? For it would be absurd to suppose that, by whole States and large portions of the country, either the North or the South has the power or the right to violate any part of that Constitution, directly and of purpose, and still claim from the other observance of its provisions. (Applause.) If the South were to violate any part of the Constitution intentionally and systematically, and persist in so doing year after year, and no remedy could be had, would the North be any longer bound by the rest of it? And if the North were deliberately, habitually, and of fixed purpose to disregard one part of it, would the South be bound any longer to observe its other obligations? This is, indeed, to be understood with some qualification, for I do not mean, of course, that every violation by a State of an article of the Constitution would discharge other States from observing its provisions. No State can decide for itself what is constitutional and what is not. When any part of the Constitution is supposed to be violated by a State law, the true mode of proceeding is to bring the case before the judicial tribunals, and if the unconstitutionality of the State law is made out, it is to be set aside. This has been done in repeated cases, and is the ordinary remedy. But what I mean to say is, that if the public men of a large portion of the country, and especially their representatives in Congress, labor to prevent, and do permanently prevent the passage of laws necessary to carry into effect a provision of the Constitution particularly intended for the benefit of another part of the country, and which is of the highest importance to it, it cannot be expected that that part of the country will long continue to observe the other constitutional provisions made in favor of the rest of the country; because, gentlemen, a disregard of constitutional duty in such a case, cannot be brought within the corrective authority of the judicial power. If large portions of public bodies, against their duties and their oaths, will persist in refusing to execute the Constitution, and do in fact prevent such execution, no remedy seems to be by any application to the Supreme Court. The case now before the country clearly exemplifies my meaning. Suppose the North to have decided majorities in Congress, and suppose

these majorities to persist in refusing to pass laws for carrying into effect the clause of the Constitution which declares that fugitive slaves shall be restored, it would be evident that no judicial process could compel them to do their duty, and what remedy would the South have? How absurd it is to suppose that when different parties enter into a compact for certain purposes, either can disregard any one provision, and expect, nevertheless, the other to observe the rest! I intend, for one, to regard and maintain and carry out, to the fullest extent, the Constitution of the United States, which I have sworn to support in all its parts and all its provisions. (Loud cheers.) It is written in the Constitution:

"'No person held to service or labor in one State, under the laws thereof, escaping into another shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered upon claim of the party to whom such service or labor may be due.'

"That is as much a part of the Constitution as any other, and as equally binding and obligatory as any other on all men, public or private. (Applause.) And who denies this? None but the abolitionists of the North. And pray what is it *they* will not deny? They have but one idea; and it would seem that these fanatics at the North and the secessionists at the South are putting their heads together to devise means to defeat the good designs of honest and patriotic men. They act to the same end and to the same object, and the Constitution has to take the fire from both sides. I have not hesitated to say, and I repeat, that if the Northern States refuse, wilfully and deliberately, to carry into effect that part of the Constitution which respects the restoration of fugitive slaves, and Congress provide no remedy, the South would no longer be bound to observe the compact. (Immense applause.) A bargain cannot be broken on one side and still bind the other side. I say to you, gentlemen, in Virginia, as I said on the shores of Lake Erie and in the city of Boston, as I may say again, in that city or elsewhere in the North, that you of the South have as much right to receive your fugitive slaves as the North has to any of its rights and privileges of navigation and commerce. I desire to be understood here among you, and throughout the country, and in hopes, thoughts, and feelings I profess to be an American—altogether and nothing but an American—(long and continued cheering)—and that I am for the Constitution. I am as ready to fight and to fall for the Constitutional rights of Virginia as I am for those of Massachusetts. I pour out to you, gentlemen, my whole heart, and I assure you these are my sentiments. (Cheers.) I would no more see a feather plucked unjustly from the honor of Virginia than I would see one so plucked from the honor of Massachusetts. (Great applause.) It has been said that I have, by the course I have thought proper to pursue, displeased a portion of the people of Massachusetts. That is true, and if I had dissatisfied more of them, what of that? (Great and continued applause.)

"I was in the Senate of the United States, and had sworn to support the Constitution of the United States. That Constitution made me a Senator of the United States, acting for all the States, and my vote was to bind the whole country. I was a Senator for the whole country. (Applause.) What exclusive regard had I to pay to the wishes of Massachusetts upon a question affecting the whole nation, and in which my vote was to bind Virginia as well as Massachusetts? My vote was to affect the interests of the whole country, and was to be given on matters of high constitutional character. I assure you, gentlemen, I no more respected the instructions of Massachusetts than I would have respected those of Virginia. It would be just as reasonable to expect me to vote as the particular interests of Massachusetts required as it would be to expect that, as an arbitrator, a referee, or an umpire between two individuals, I was bound to obey the instructions of one of them. (Applause.) Could I do that? Have I descended, or am I expected to descend, to that level? (Cries of 'Never, never. You are not the man to do it.') I hope not."

The reader now has the whole context; and he will see that in speaking of a particular clause in the Constitution which may properly enough, like many others in it, be regarded as founded in a compact between different classes of the States, Mr. Webster uttered the very familiar truth that if a bargain is broken on one side it may be broken on the other. But *how* broken? By the supposed remedy of "constitutional secession?" Not at all. It must be broken by *revolution*, which secession is, however provoked. Mr. Webster was addressing himself to the Northern fanatics, and he tells them that if they undertake to treat the Constitution as a nullity in the matter of surrendering fugitive slaves the South will have the right, which is the foundation of all revolutions, to break up the Union by making a revolution. At the same time, he tells the South, just as plainly, that if, on imaginary grievances, or any grievances that can be redressed under the Constitution, they "take the first step in the programme of secession"—which means the alleged constitutional right of States to withdraw from the Union—that step will "be promptly met," and that he will not remain an hour in any administration that does not meet it effectually and at once. The distinction is palpable, and it should not have been overlooked by Mr. Stephens. Still less should he have overlooked the following correspondence, which was published in the newspapers, at the time, and which

ought effectually to end all controversy about Mr. Webster's later or earlier opinions as to the character of the Constitution:

[FROM A CITIZEN OF NORTH CAROLINA TO MR. WEBSTER.]

Hon. DANIEL WEBSTER:

DEAR SIR: The question of the right of a State to secede from the Union is, as you are doubtless aware, producing at this time, in this part of the Union, no inconsiderable degree of excitement. And as it is a question in which every free American is directly concerned, a question upon which every free American should be correctly informed, as upon its decision may depend the future prosperity and happiness or misfortune and ruin of this great country; and believing, as I do, that from your intimate acquaintance with the principles upon which our government is based, and the operation of all of its machinery, you are entirely competent to give upon this, as upon all other questions of like character, correct information; and being anxious myself, as many others are, to possess correct views with regard to the subject, I desire you, valuable as I know your time to be, to devote a moment in giving an answer to the following interrogatory: 'Do you believe that a State has a right to secede from the Union?' By answering this question, sir, you will confer a favor upon many of your countrymen here, who believe, as I do, that an opinion of yours, thus expressed, would go very far towards quieting the excitement that the agitation of this subject has produced in this section of the Union. With profound admiration for your character as an American statesman, and sincere regard for you as an American citizen,

I am, Sir, your obedient servant,

July 20, 1851.

[MR. WEBSTER'S ANSWER.]

August 1, 1851.

DEAR SIR: I have received your letter of the 20th July. The Constitution of the United States recognizes no right of secession, as existing in the people of any one State or any number of States. It is not a limited confederation, but a government; and it proceeds upon the idea that it is to be perpetual, like other forms of government, subject only to be dissolved by revolution. I confess I can form no idea of secession but as the result of a revolutionary movement. How is it possible, for instance, that South Carolina should secede and establish a government foreign to that of the United States, thus dividing Georgia, which does not secede, from the rest of the Union? Depend upon it, my dear sir, that the secession of any one State would be but the first step in a process which must inevitably break up the entire Union into more or fewer parts. What I said at Capon Springs was an argument addressed to the North, and

intended to convince the North that if, by its superiority of numbers, it should defeat the operation of a plain, undoubted, and undeniable injunction of the Constitution, intended for the especial protection of the South, such a proceeding must necessarily end in the breaking up of the government: that is to say, in a revolution.

I am, dear sir, with respect, your obedient servant,

DANIEL WEBSTER.

I have thus gone over the proofs adduced by Mr. Stephens to show that Mr. Webster had changed his opinions; and have made it plain, I trust, that what he said in 1839 or 1851, is entirely consistent with his theory of the Constitution as maintained in 1830–33. Both he and Mr. Calhoun held the States to be sovereign political communities; but the point at which they diverged from each other, and in consequence of which divergence they never could unite, was this: that Mr. Webster held the grant of political powers embraced in the Constitution to be perpetual and irrevocable, constituting a government proper, to the extent of those powers, by the establishment of a fundamental *law*, which rests on the same obligations and sanctions which are the support of *all* law; whereas Mr. Calhoun held that the powers of the Constitution were only delegated by the States to an agent, and could be resumed at any time when the sovereign who delegated them sees fit, for cause of which he is to judge, to withdraw them. It is perfectly easy to see that this difference of view springs from opposite opinions respecting the divisibility of sovereign powers. It has always been a dogma of the South Carolina school that sovereignty is indivisible—incapable of being granted away in part and in part reserved; that it is a unit, and must be wholly retained or wholly surrendered. On the other hand, Mr. Webster and all those before him or after him, who have regarded the Constitution of the United States as something more than a mere federal league or a federal compact between independent States, have always held that sovereign powers are capable of division; that a part can be granted *in fee* and the residue can be retained, and that thus there is in this country, by the grants of the Constitution, a national sovereignty of a limited character, and by the reservations impliedly made and expressly declared a separate State sovereignty which embraces every political power not

enumerated in the Constitution of the United States. Whichever of the theories is the correct one, they agree in attributing independent sovereignty to the States in respect to their reserved powers. They differ only in respect to the legal capacity of the States, under the Constitution, to withdraw or resume the powers conferred by their people on the government of the United States. Mr. Webster never denied that the States, in their original capacities, could break up the Union by a revolution; but he denied that they could make a legal secession from the Union as a right resulting to them from the nature and intent of the Constitution. On the very last occasion on which he referred to this subject in the Senate (March, 1850,) he said:

"I hold that the breaking up of this Union by any such thing as voluntary secession of States is impossible. I know that the Union can be broken as other governments have been; and I admit that there may be such a degree of oppression by one part, being the majority, upon the minority, as will warrant resistance and forcible severance. That is revolution. On that ultimate right of revolution I have not been speaking; I know that law of necessity does exist. I forbear from going further, because I do not wish to run into discussion upon the nature of this government. The honorable member and myself have broken lances sufficiently often heretofore."

Mr. CALHOUN (in his seat)—"I do not desire it now."

Mr. WEBSTER—"I presume the honorable Senator does not desire it now. I have quite as little desire as he."

This occurred in a colloquy after the close of Mr. Webster's speech of March 7, 1850. Does it look as if he had changed his opinions since 1830 or 1833? It is the very essence of what he said in those years: a denial of that uncontrolled and unimpaired State sovereignty on which the constitutional right of secession is founded, and an admission that the States can make a revolution if they are subjected to intolerable oppression.

II.—Mr. Stephens' Reply.

Liberty Hall,
Crawfordville, Georgia, *August* 31, 1869.

Messrs. Editors of the N. Y. World:

You will, I trust, allow me space enough in your columns to reply to the article of Mr. George T. Curtis in your issue of the 23d inst., which reached me only a few days ago. If Mr. Curtis had given close attention to the language and the due import of the words used in the text of that part of the book he undertook to review, it seems to me he would have been relieved from the great astonishment he expresses at it, as well as from the no very small labor he has bestowed upon an attempted refutation of the positions therein maintained. He must certainly be quite as "*unfortunate*" a *reader* as he imagines me to be a "*historian*," if he perceives in any thing said by me upon the subject the slightest ground for supposing that I intended even to intimate or suggest that Mr. Webster, in the later years of his life, or at any time, had so far changed or modified any of his previous opinions "respecting the nature of the Constitution, as to become a convert or almost a convert," to the doctrine of "State Secession from the Union as a *Right* under the Constitution." Certainly nothing he quotes from me can properly bear any such construction, and just as certainly nothing said by me, which he has not quoted, can bear any such construction.

His quotations are as follows:

"Mr. Stephens observes (p. 387):

"'The power and force of this speech (Mr. Calhoun's) must have been felt by Mr. Webster himself. He was a man of too much reason and logic not to have felt it. This opinion I am more inclined to from the fact that he not only did not attempt a general reply to it at the time, but from the further fact that in after life he certainly, to say the least of it, greatly modified the opinions held by him in that debate.'

"In the next chapter Mr. Stephens' interlocutor having called for proofs, he proceeds to give them. He then (p. 405) after citing, as the latest evidence, a speech made by Mr. Webster in 1851, observes:

"'That this speech shows a modification of the opinions expressed in his speech of 1833, must be admitted by all. He had grown older and

wiser. The speech of 1851 was in his maturer years, after the nature of the Government had been more fully discussed by the men of his own generation than it had been in 1830 and 1833. He was too great a man, and had too great an intellect not to see the truth when it was presented, and he was too honest and too patriotic a man not to proclaim the truth when he saw it, even to an unwilling people.'"

Is there any thing in either of these even intimating or suggesting that Mr. Webster had changed his opinions upon the question of State secession in any way, either *under* the Constitution or as a *revolutionary right?* The citations made by me from his speech before the Supreme Court, in 1839, and his letter to the Barings the same year, as well as the citation from his speech in 1851—all of which are admitted by Mr. Curtis to be correct, and which are reproduced by himself—were not made with the view to show that Mr. Webster *favored* secession as a *constitutional* remedy for wrongs of any sort, or that he was not opposed to any such remedy either theoretically or practically; nor was any such use or application made of them by me. Secession was not the point in issue between the colloquists at the time. That was the isolated question, whether or not the Constitution was a compact between sovereign States.

For a clear understanding of the whole subject, and to enable your readers to judge correctly how far Mr. Curtis has been successful in detecting any error in my statements, or in refuting any assertions of mine in the premises, it is proper that they should know not only what I said but the connection in which it was said. Then, let it be distinctly understood that the fact at issue between the colloquists, at the time the remarks about the modification of Mr. Webster's opinions were made, was simply whether the Constitution was a Compact between the States, as distinct, separate sovereign political bodies. This was one point, first to be clearly established *beyond all doubt and question*, in the line of my argument. I had maintained that it was. Professor Norton had read Mr. Webster's great speech in the Senate in 1833, on Mr. Calhoun's resolutions, to show that it was not. This argument, he insisted, conclusively showed that the Constitution was not a Compact between Sovereign States. Let it also be understood that the first of Mr. Calhoun's resolutions, against which all Mr. Webster's powers

were put forth in that speech, according to his own view, and as stated by him in the speech, embraced this doctrine:

"That the political system under which we live, and under which Congress is now assembled, is a Compact, to which the people of the several States, as separate and sovereign communities, are the parties."

Let your readers also bear in mind that the doctrine so set forth in this resolution, as Mr. Webster understood it, he opposed *toto cœlo*—root and branch. (*See Con. View of the Late War between the States*, Vol. I., p. 301.) In direct opposition to it he planted himself upon the following proposition:

"That the Constitution of the United States is not a league, confederacy, or compact between the people of the several States in their sovereign capacities, but a government proper, founded on the adoption of the people, and creating direct relations between itself and individuals."

In his speech he broadly and unequivocally denied that the "Constitution was a compact between the States," holding that if "our instrument of government be a constitution, then for that very reason, it cannot be a compact between sovereigns." "A constitution of Government," said he, "and a compact between sovereign powers being things essentially unlike in their very natures, and incapable of ever being the same." The line of argument in the speech was to show that the Federative character of the Government, as it had existed under the Articles of Confederation, had been entirely done away with by the adoption of the Constitution; and that a *National Government*, without any sort of Federal alliance, had been thereby established. He maintained that the Union established under the Constitution was no longer a union of States, but a union of the whole people of all the States in one body politic. Among other things on this point, he said, with emphasis:

"You will observe, sir, that it is *the people*, and not the States, who have entered into this compact: and it is the *people* of all the United States. These conventions, by this form of expression, meant merely to say that the people of the United States had, by the blessing of Providence, enjoyed the opportunity of establishing a new Constitution *founded in the consent of the people.* This consent of the people has been called, by European writers, the *social compact;* and, in conformity to this com-

mon mode of expression, these conventions speak of that assent, on which the new Constitution was to rest, as an explicit and solemn compact, not which the States had entered into with each other, but which the *people* of the United States had entered into.

"Finally, sir, how can any man get over the words of the Constitution itself? '*We, the people of the United States, do ordain and establish this Constitution.*' These words must cease to be a part of the Constitution, they must be obliterated from the parchment on which they are written, before any human ingenuity or human argument can remove the popular basis on which that Constitution rests, and turn the instrument into a mere compact between sovereign States!"

This speech, be it remembered, had just been read by Professor Norton, as a conclusive refutation of my position in the Colloquies; and after some comments of my own upon it (see page 337), for a full answer to it, following his example, I had read Mr. Calhoun's speech in reply. At the close of this the colloquy proceeds as follows, page 387:

"This is quite enough," said I, "of Mr. Calhoun's reply. I have read all of it that bears directly upon the main points in issue between them. On these points never was a man more completely answered than Mr. Webster was. The argument is a crusher, an extinguisher, an annihilator!"

"Professor NORTON—'Where is Mr. Webster's rejoinder?'"

"Mr. STEPHENS—'He made none. He followed with a few remarks only, disavowing any personal unkind feelings to Mr. Calhoun, explaining how he had used the term "Constitutional Compact," in 1830; and attempting to parry one or two of the blows, but he never made any regular set reply or rejoinder. He never came back at his opponent at all on the real question at issue. Mr. Calhoun stood master of the arena. This speech of his was not answered then; it has not been answered since; and, in my judgment, never will be or can be answered while truth has its legitimate influence and reason controls the judgment of men! The power and force of this speech must have been felt by Mr. Webster himself. He was a man of too much reason and logic not to have felt it. This opinion I am the more inclined to from the fact that he not only did not attempt a general reply to it at the time, but from the further fact that in after life he certainly, to say the least of it, greatly modified the opinions held by him in that debate.'"

"Professor NORTON—'To what do you refer?'

"Mr. STEPHENS—'I refer specially to a speech made by him before the Supreme Court of the United States, in 1839, and to his speech at Capon Springs, in Virginia, in 1851, as well as some other matters.'"

Then follow the citations quoted by Mr. Curtis from the speech before the Supreme Court, from the letter to the Barings, and from the Capon Springs speech. These are the essential facts of the case; and from which it clearly appears that the *sole object* in view in these citations was to show, as I thought they did, and still think they do, *great modifications, to say the least of it*, of the opinions of Mr. Webster as expressed in the speech referred to, and on the main point then at issue between him and Mr. Calhoun, and not to show that Mr. Webster had become "a convert" to the doctrine of *State Secession* in any form. Mr. Curtis thinks that these citations show no such modification. Be it so. This is a matter of opinion only. An intelligent public can judge of our respective opinions on the subject. Mr. Webster, in his argument before the Supreme Court, did certainly say:

"In respect to this law of comity, it is said States are not nations; they have no *national sovereignty; a sort of residuum of sovereignty* is all that remains to them. The national sovereignty, it is said, is conferred on this Government, and part of the municipal sovereignty. The rest of the municipal sovereignty belongs to the States. Notwithstanding the respect which I entertain for the learned judge who presided in that Court, *I cannot follow in the train of his argument.* . . . Suppose that this Constitution had said, in terms after the language of the Court below, all national sovereignty shall belong to the United States; all municipal sovereignty to the several States. I will say that, however clear, however distinct, such a definition may appear to those who use it, the employment of it in the Constitution would only have led to utter confusion and uncertainty. *I am not prepared to say that the States have no national sovereignty.* . . . The term 'sovereignty' does not occur in the Constitution at all. *The Constitution treats States as States*, and the United States as the United States; and, by a *careful enumeration*, declares *all* the powers that are granted to the United States, and *all the rest* are reserved to the States. . . . *The States of this Union, as States, are subject to all the voluntary and customary laws of nations.*"

These utterances were made by Mr. Webster in 1839, six years after the speech in 1833; the *italics* are mine. Mr. Curtis, in a note to his article, in his reproduction of my quotation, says that he preserved my italics; but somehow or other my italics were not preserved in his republication, as any one can see by a reference to the book. Not a single sentence italicized

by me is italicized in his republication; nor did I put in italics a single sentence printed in italics, in that republication. This remark is made in passing, to let your readers know that I place no stress whatever upon those portions of the speech which in his republication were thus italicized, while I did place great stress upon those that I had thus marked. In my comments on this speech I said (p. 392):

"In this carefully prepared argument Mr. Webster significantly says that in the Constitution nothing is said about sovereignty. This is all important. He admitted, in the debate with Mr. Calhoun, that the States were sovereign before the Constitution was adopted. In this argument he holds the position that the powers delegated to the United States in the Constitution are specific and limited, and that all not delegated are reserved to the States. He states distinctly that the Constitution treats the States as States. If the States, then, were sovereign anterior to the Constitution, and sovereignty was not delegated or parted with by them in it (as it could not have been, as the Constitution is silent upon the subject), then, of course, it is still reserved to the States. If the sovereignty of the States was not delegated or parted with in the Constitution, was it not of necessity retained by them? He clearly so argues. This is the inevitable conclusion from the rules of inexorable logic. The decision of the Supreme Court in this case was on the line of his argument, and fully sustained his position."

The Sovereignty of the States was one of the points in issue between him and Mr. Calhoun. I did think, and still think, the expressions in this speech showed a great modification of his views as presented in 1833. But Mr. Curtis says:

"I presume that Mr. Webster would have been very much astonished if, on the argument of this case, one of his opponents had risen and said: 'So, then, sir, it appears that you have modified your opinions about the nature of the general government, for you have distinctly said that the States are nations; that they are sovereign; that the Constitution treats the States as States, and, if they are *sovereign* States, you must have changed your views as you expressed them in the Senate in 1830 and 1833.' I fancy that Mr. Webster would have answered thus:

"'When did I ever deny that the States are independent political communities, with full attributes of sovereignty in respect to all the powers of government not embraced in the Constitution of the United States and not therein expressly restricted? Be pleased to observe, sir, that the idea that a State cannot part with a portion of its sovereignty and *remain* a

State may be yours, but it is not mine. It has always been my doctrine, and is still, that the States did this very thing when they ratified the Constitution; that they parted with a portion of their sovereignty and yet *remained States.*'"

Let me say to Mr. Curtis, if I had been the person to whom Mr. Webster had offered such a defense of himself, I should have said to him in reply:

"Why, Mr. Webster, how can you say that 'it has always been your doctrine, and is still, that the States did this very thing when they ratified the Constitution,' in the face of the emphatic declaration in your speech on Mr. Calhoun's resolutions, that the Constitution was *not ratified by the States at all?* That the States as States had nothing to do with it? You then said: 'You will observe, sir, that it is *the people* and *not the States*, who have entered into this compact; and it is the people of all the United States'—not the people of the States acting separately as distinct political bodies, much less nations—who ratified it; that it was the people of the whole country united as one nation, and that no 'human ingenuity or human argument' could 'turn the instrument into a mere compact between sovereign States.'

"Your reply to my remark, as well as your whole argument before the court, is based upon the doctrine that our Union is one of States, perfect States, or Nations, as you call them, joined together by some sort of agreement or compact wherein are distinctly set forth certain specific powers of government carefully enumerated, which are to be exercised by the general government within their respective jurisdiction. You quote Vattel to show how States may be thus united and still be 'as much component parts of the laws of nations as any others.' This author does very clearly set forth the nature of the union of these States as I now understand you to hold it to be. He says pointedly:

"'Several sovereign independent States may unite themselves together by a perpetual Confederacy without ceasing each to be individually a perfect State. They will together constitute a Federal republic; their joint deliberations will not impair the sovereignty of each, though they may in certain respects put some restraint on the exercise of it in virtue of voluntary engagements.'

"This clearly shows the nature of our Union, as I understand you now hold it to be. But is not this view of it a great modification of the view entertained when you maintained in your speech of 1833 that it was not a Confederacy or Federal Republic in any sense whatever? How is this? Will you please to explain further?"

Will Mr. Curtis, as Mr. Webster's representative, be pleased to give us what answer he imagines Mr. Webster could give to this reply without admitting a modification of his views?

But to proceed. It is an admitted fact that Mr. Webster did say in his letter to the Barings, in 1839, in speaking of the States of this Union: "Every State is an independent sovereign political community, except in so far as certain powers which otherwise it might have exercised have been conferred on a general government, established under a written constitution, and exerting its authority over the people of all the States. This general government is a *limited government.* Its powers *are specific and enumerated.* All powers not conferred upon it still remain with the *States* and with the people."

Mr. Curtis says "It would be difficult to describe our political system with a greater precision or more correctly than Mr. Webster stated in this opinion." With Mr. Curtis in this view I concur thoroughly. *In as few words* it would be difficult to give a more correct or accurate *idea of its general principles.* But let me ask Mr. Curtis, or any intelligent man, wherein is there any *essential* or *conceivable* difference between the *nature* or *character* of the government thus described and the government of the United States under their first Articles of Union, the words of one of these Articles being:

"Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled."

The only *possible* difference is *as to the extent* of the powers delegated and *the machinery* for their exercise. Does Mr. Curtis see no modification of the views expressed in this letter from those presented in Mr. Webster's first proposition as to the nature of our government in 1833, above set forth, wherein

he maintained that ours was not a Confederacy of any sort? Could such a government as he describes in his letter to the Barings be *instituted* without some *agreement* or *compact* between the members of it or parties to it, settling by *enumeration* the specific powers parted with by them? In that speech he declared there was no such compact. The views, therefore, expressed in 1839 by him do appear to me to be considerably modified from those expressed by him on the same subject in 1833. If Mr. Curtis thinks differently, so be it. It is only a difference of opinion between us.

Again. It is an admitted fact that Mr. Webster, in his speech at Capon Springs, in 1851, did use the following language:

"I have not hesitated to say, and I repeat, that if the Northern States refuse, wilfully and deliberately, to carry into effect that part of the Constitution which respects the restoration of fugitive slaves, and Congress provide no remedy, the South would no longer be bound to observe the compact. A bargain cannot be broken on one side and still bind the other side."

In the previous part of the same speech it is admitted that he said:

"How absurd it is to suppose that when different parties enter into a compact for certain purposes either can disregard any one provision, and expect, nevertheless, the other to observe the rest! I intend, for one, to regard, and maintain, and carry out, to the fullest extent, the Constitution of the United States, which I have sworn to support in all its parts and all its provisions."

In this speech I maintain that Mr. Webster fully admitted the Constitution to be a Compact between the States of the Union, and recognized the obligation of each State as well as his own to observe its provisions as such. This did seem to me to be a very great modification of his views on the same subject as expressed in 1833, when all his powers were put forth to show that it was not a Compact between the States. The views expressed in this speech amount, in my opinion, to an admission in effect of all that was set forth in Mr. Calhoun's first resolution, against which Mr. Webster's speech in 1833 was chiefly directed. Let Mr. Curtis, or any one else, read that

resolution as I have given it above, as it was stated in substance by Mr. Webster himself, and then read that part of his Capon Springs speech, and point out any essential difference between them if he can. If Mr. Curtis sees no modification, no difference between the doctrine expressed in the Capon Springs speech and that set forth by Mr. Webster in his resolution above cited, on which he planted himself in his great speech of 1833; to say nothing farther of the argument in the body of that speech, wherein he maintained that the Constitution was not a Compact between the States, then again I say be it so. I thought, and still think, there is a very great modification, to say the least of it, of the views in the latter from the views expressed in the former, and directly upon the main point at issue between him and Mr. Calhoun. That point then at issue on Mr. Calhoun's first resolution was not nullification or *secession*, but the isolated question whether the Constitution is a Compact between the States.

My comments on this speech appear in the second of Mr. Curtis' quotations, from the book as above given. From this it appears that I used it for no such purpose as he seems to imagine. I did not use it even to show an inconsistency in Mr. Webster, to his discredit. He was a man whom I greatly admired. Of this I have given many and abundant proofs. His memory I shall ever revere. His reputation, while in life, I defended on several occasions when unjustly assailed, and I am not the less ready to do the same thing now, when he is no longer amongst the living. His fame and good name belong not exclusively to those of his own blood or executors; they belong to the country, the age, and to the world, and should be safe in the hands of every just and upright man. I did believe, and do believe, that he felt the power of Mr. Calhoun's reply to his great argument made to prove that the Constitution is not a Compact between the States. I have no idea, however, that he became a convert to Mr. Calhoun's views, with the logical sequences he claimed from his premises. On the contrary, I believe and feel well assured that he did not; but I do believe his own opinion on the main question involved in the debate in 1833, that is, the question of the Constitution being

a Compact between the States, underwent considerable modification, *to say the least of it*, in the after part of his life. It was solely with a view to show the reason of this opinion of mine that the citations from his speeches and letter referred to were made.

But Mr. Curtis says I am "singularly unfortunate," as a historian, in this, that I "*cited* this Capon Springs speech of Mr. Webster for the purpose of showing that he had come in 1851 to regard the Constitution as a Compact between the States, yet overlooked the passages in the same speech which show that he did not so regard it." If what Mr. Curtis here says be correct, I am very justly chargeable with being something worse than an "unfortunate historian." In reply to the criticism, I have this to say: If there is any thing in the speech from which the citation is taken that goes to show or tends to show that Mr. Webster *did not* mean just what he said, and just what his words clearly import, and just what I understood him and quoted him as meaning, it not only escaped my attention when the citation was made, but after the most diligent search through that speech and the other made at the same place, both of which Mr. Curtis has published, it still escapes my search. I can find nothing of the sort. I find, as I found when the citation was made, a great deal which conclusively shows that he was *utterly opposed to secession* as a *constitutional remedy* against any supposed wrongs on the part of the General Government; but not one word qualifying in the least about the Union being "a union of States," and the Constitution being a Compact between them. If Mr. Curtis found any thing of that kind in either of these speeches, he most *unfortunately* failed to point it out. The citation, therefore, was not only pertinent, but exceedingly fortunate for my purpose.

Another "singular error" which Mr. Curtis is pleased to charge me with is in relation to the rejoinder of Mr. Webster to Mr. Calhoun's speech in 1833. I said that Mr. Webster made no regular set reply or rejoinder to Mr. Calhoun. He had followed with a few remarks only, explaining and attempting to parry one or two of the blows. He never came back at his opponent at all on the real question at issue. That he did

not make any general reply Mr. Curtis admits, but attempts to show, by giving a history of the debate, that it was not called for; that Mr. Webster's speech was, in fact, a reply to one from Mr. Calhoun on the same subject; and Mr. Calhoun's speech, to which I referred, was itself a rejoinder to Mr. Webster's, which brought out no new matter of importance, and needed no farther special notice. This seems to be the object of his narrative in giving the history of the debate, and in exposing what he calls an error of mine. Now, the truth of this matter is just as stated in the book. The Force Bill was introduced on the 21st day of January, 1833. Mr. Calhoun's resolutions were introduced the next day. They took their place on the table. The Force Bill was taken up first. Mr. Calhoun spoke against that on the 15th and 16th of February. Immediately on the conclusion of Mr. Calhoun's speech on the Force Bill, Mr. Webster arose and addressed the Senate on Mr. Calhoun's resolutions, which were not then before them for consideration (*Niles' Register, Vol. xliii., App.*, p. 170). He devoted his speech almost entirely to these resolutions. He did not in his speech from beginning to end allude specially to a single position or argument of Mr. Calhoun's speech just delivered upon the Force Bill. Some very general references to it are all that he made. It was on the 26th of February, when his resolutions were before the Senate for consideration, that Mr. Calhoun replied to Mr. Webster's speech delivered on these resolutions ten days before. This speech was made in defence of his resolutions against the assault that had been made on them. It covered ground never before occupied, and presented arguments never before presented by Mr. Calhoun in the Senate. On these new grounds and new arguments Mr. Webster never came back at him. He did, I said, make a few remarks attempting to parry some of the blows. Mr. Curtis has published the whole of these. He thinks, from his account of the debate, that *but little* was necessary to be said, and that *little* was said in a "*nutshell.*" This "nutshell," however, as he calls it, as your readers perceive, is just of the character I had represented it to be! What Mr. Webster said in it about "*accession*" and his other attacks upon the language of Mr. Calhoun's

resolution, can be looked upon as nothing but efforts to parry. Calhoun had demolished him on all these. The same is true of what he said on the resolution when modified by Mr. Calhoun to meet the full demands of his criticism. The only other attempted parry was what he said *about* Mr. Calhoun's *crushing* argument, drawn from the 7th Article of the Constitution itself. This is in these words:

"The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution BETWEEN *the States* so ratifying the same."

His rejoinder to this, as will be seen in Mr. Curtis' article, stated substantially in a "nutshell," amounted to this, and this only; that the words "*between the States so ratifying*" meant *between the people so ratifying!* Does Mr. Curtis think that *this little* was all that was *necessary* to be said to sustain before an intelligent audience his position "that it was not the *States* but the *people* who had entered into the compact," and not the people of the States separately, but the people of all the States? If he does so think, so let it be. Mr. Webster, however, I suppose, thought this was a very proper occasion on which to adhere to the proverb, "the least said the soonest mended." Be that also as it may, I can consider it as nothing but a struggling, ineffectual effort of a strong man, as Mr. Webster certainly was, to hold his own under the effects of a *stunning blow!* Whoever heard the word *between* so used? Had *his* position been correct, it might have been proper enough to declare that the Constitution should be established *over* or *for* or *by* the people so ratifying it in nine States. But what an unheard-of *inappropriateness* in the application of a word would it not be to speak of establishing a Constitution or any thing else *between the people in a collective mass!* He then doubtless felt the force of Mirabeau's remark, which in his speech he had quoted, that "words are things." He felt that the word *between* as it here stands in the Constitution is a real, a solid and tremendous thing! A thing, that utterly demolished the whole superstructure of his argument!

Let me ask Mr. Curtis, if this argument, to say nothing of many others urged by Mr. Calhoun in his reply to Mr. Webster,

was not *new ground*, not before occupied by him; and then let Mr. Curtis say to an intelligent world, whether he thinks that Mr. Webster's "*nutshell*" rejoinder did successfully meet Mr. Calhoun upon it? Mr. Curtis states distinctly that "he enters into no vindication of the opinions of Mr. Webster as expressed in 1830 and 1833." Is he not discreet in this? For in his own History of the Constitution, has he not himself utterly demolished one of the main arguments of Mr. Webster, whether Mr. Calhoun did or not? Mr. Webster, as we have seen, broadly asserted that the Constitution could not be a Compact between the States because said he, "if our instrument of government be a *Constitution*, then for that *very reason* it cannot be a *compact* between sovereigns; a constitution of government and a compact between sovereign powers being things *essentially unlike in their very natures, and incapable of ever being the same.*" But Mr. Curtis, in his History of the Constitution, has shown that the first Articles of Confederation, which were a Compact between the Sovereign States then composing the Union, were a *Constitution* of government between the sovereign parties making it. These articles of union between these sovereign powers were, he says, "the first written *Constitution* of the United States." (Vol. i., p. 139.) And he further says that "the parties to this instrument (the Articles of Confederation) were free, sovereign, political communities, each possessing within itself powers of legislation and government over its own citizens, which any political society can possess." Now, if "Mr. Webster always knew his fame was completely identified with the doctrine that regards the Constitution not as a compact," as Mr. Curtis said he did, then has he not himself completely overthrown one of the main pillars on which that fame was erected?

In speaking thus, I do not mean to detract from Mr. Webster's real merits, or his true fame. Who could be justly supposed to intend detraction from the fame of Lord Mansfield, either as a statesman, an orator, or a jurist, by stating that, on one memorable occasion, in the House of Lords, he was dumbfounded by Lord Chatham in reply to one of his most celebrated speeches—that he was for some time silent—and when forced

up, laboring "under the badness of his cause, spoke in a style characterized as frigid and pettyfogging" (See "Campbell's Lives of Chief Justices," Vol. xi., p. 473). Mr. Webster was truly a very great man, and his argument, which Mr. Calhoun did so thoroughly demolish, was truly a masterpiece of transcendent intellect and eloquence combined. As evidence of the estimate I put upon him and his speech, I deem it proper in in this connection to present to your readers what I said in the colloquy upon both.

"It is true, I always regarded Mr. Webster as one of the ablest of our statesmen; this the bust and the picture in the Hall fully attest. In many respects I considered him the first man in this country, and, indeed, the first man of the age in which he lived. In mental power, in grasp of thought and in that force and manner of expression which constitute eloquence, he had no superior. Intellectually, he was a man of huge proportions, and his patriotism was of the loftiest and purest character. Such was, and is, my estimation of him. . . . . You did well, therefore, in selecting his argument on this subject. It is the embodiment of all that can be said on your side of the question. It was the characteristic of Mr. Webster to leave nothing unsaid on his side of any subject he spoke on that could be said to strengthen it, and all that could be said he always said better than anybody else. Hence, whether at the bar, on the hustings, or in the Senate, his speeches were always the best that were made on his side. It used to be a remark, often made by our Chief Justice Lumpkin, who was a man himself of wonderful genius, profound learning, and the first of orators in this State, that Webster was always foremost amongst those with whom he acted on any question; and that, even in books of selected pieces, whenever selections were made from Webster, those were the best in the book. This, I think, was not too great an eulogium upon his transcendent powers and varied abilities. But it is not the lot of any man to be perfect. I am far from believing Mr. Webster free from political errors. And this speech of his, which, by many (his biographer included, I believe), is considered the greatest of his life, you will allow me to say, contains more errors of this sort than any he ever made. His premises being erroneous, his conclusions must be of the same character. The superstructure is grand. It is the work of a master genius. But the foundations are not solid. It was this speech, by the by, which gave him the appellation of the Great Expounder of the Constitution with the Consolidationists of that day. In it he did throw all the might of his gigantic and Titan powers. But the subject was an overmatch for him; the undertaking was too great for even him. Facts were too stubborn. His whole soul was in the subject, and he strove to establish what he wished, rather

than what actually existed. His effort was to make facts bend to theory. This could not be done. This speech, I readily admit, is the best and ablest that was ever made upon that side of the question. It stands as a monument of genius and eloquence. As such it may well take its place by the side of the great argument of Hume in the defence of the prerogative of the crown, claimed by the Stuarts, or Sir Robert Filmer's famous productions in favor of the Divine Right of Kings, or Sir George Mackenzie's 'Jus Regium,'" (p. 336).

This extract from the book shows my appreciation of Mr. Webster, and this speech of his. But Mr. Curtis, in his attempt to point out what he called a singular error of mine, has committed a very important historical error himself, which I do not intend to permit to pass unnoticed. In his narrative he says:

"The autumn of 1832 and the winter of 1833 witnessed the crisis of 'nullification.' The revenue laws of the United States had been prostrated in South Carolina by a system of State laws which directly obstructed the collection of any revenue whatever. It had become necessary for the President of the United States to act, and that President was Andrew Jackson. His proclamation warned the nullifiers that their acts were acts of 'treason;' and when Congress assembled in December, he asked for the passage of a law adapted to the exigency, to enable him to enforce the collection of the revenue."

Now, the facts are, the system of laws known as the Nullifying Acts of South Carolina were passed prospectively. They were not to go into effect until the 1st of February, 1833. By the interposition of the State of Virginia, through her commissioner, Benjamin Watkins Lee, the time for these laws to go into effect was postponed until the close of that session of Congress, which was the 4th of March, under the hope and expectation that Congress would redress the wrongs complained of. Mr. Clay's Compromise Bill on the tariff was passed in the mean time. This satisfied South Carolina. These laws were repealed. They never did go into effect, and the revenue laws of the United States had never been prostrated or obstructed by them in the State of South Carolina.

Another matter in Mr. Curtis' article needs notice. He makes statements about Mr. Webster's speeches and General Jackson's proclamation, calculated to create the impression that General Jackson approved the sentiments and doctrines of this

speech of his on the 16th February, 1833; and you, Mr. Editor, are pleased editorially to say, that "Mr. Webster's view of our constitutional system was the same with that held by the great body of the Democratic party at the time when General Jackson was President, and when a Democratic administration was responsible for the course of the government on a critical occasion." Now I must be permitted most respectfully, but most emphatically, to say that this is a great historical mistake. General Jackson, doubtless, felt under great obligations to Mr. Webster for his powerful influence and aid against the doctrine of nullification. To this extent I do not question he approved his speech in 1830 on the Foote resolutions, and his speech in 1833 against Mr. Calhoun's resolutions; but he did not agree with either of these speeches, so far as they denied the Federal character of the Government, or maintained that the Constitution was not a Compact between the States as sovereign parties to it. Of this we have the most unquestionable testimony in his authoritative explanation of the proclamation given through the Washington *Globe*. In this, amongst other things, the editor says:

"*But we are authorized* to be more explicit, and to say positively that no part of the proclamation was meant to countenance principles which have been ascribed to it. On the contrary, its doctrines, if construed in the sense they were intended and carried out, inculcate that the Constitution of the United States is founded on compact; that this compact derives its obligations from the agreement entered into by the people of each of the States in their political capacity with the people of the other States; . . . . *that in the case of a violation of the Constitution of the United States, and the usurpation of powers not granted by it on the part of the functionaries of the General Government, the State governments have the right to interpose, and arrest the evil upon the principles which were set forth in the Virginia Resolution of* 1798 *against the Alien and Sedition laws, &c.*"

In another part of the same authoritative explanation, it is said:

"The *close of the preamble* which we have quoted above, *in connection with its first words*, preserves the same idea. The Constitution is declared to be established, *not for an aggregate people*, but '*for the United States of America.*'"

Such were the views of General Jackson and the great majority of the Democratic party at that time, and such have been the views of the great majority of the Democratic party from the days of Jefferson to this day, and ever will be so long as it maintains the true standard of its time-honored principles. How these principles were considered by the great majority of the Democratic party and the great majority of the people of the United States, at that time and subsequently, may be judged by the actions of their duly accredited representatives on record. Mr. Calhoun's resolutions were not acted on in the Senate in 1833. Three days after his speech upon them the controversy with South Carolina was settled by the passage of Mr. Clay's Compromise Bill. Congress adjourned the 4th of March; but the agitation of these principles did not cease, as is stated in the book, and that part of it which Mr. Curtis reviews (p. 398). The subject of the discussion, though the controversy that gave rise to it was amicably adjusted, was taken up by the press, by public speakers, by the State Legislatures, and by the people generally. The great discussions of 1798, 1799, and 1800 were revived. Old landmarks of principles were traced, and the rapid strides of the Federal government towards consolidation were again stopped. Mr. Calhoun, on the 28th of December, 1837, renewed the subject in the Senate. He then brought forward another set of resolutions on the same subject, and pressed them to a vote. The first of these resolutions is as follows:

"1. *Resolved*, That in the adoption of the Federal Constitution the States adopting the same acted severally as free, independent, and sovereign States; and that each for itself by its own voluntary assent entered the Union with a view to its increased security against all dangers, domestic as well as foreign, and the more perfect and secure enjoyment of its advantages, natural, political, and social."

This resolution, which distinctly affirms the great truth set forth in the first of his series in 1833, passed the Senate, by the large majority of 32 to 13, on the 3d day of January, 1838. (*Congressional Globe, Second Session, 25th Congress*, p. 74.) This was certainly the highest authoritative exposition of the subject that could be given. It was the amplest vindication of the merits of Mr. Calhoun's argument in 1833. His argu-

ment and Mr. Webster's had gone to the country, and this was the verdict of the States upon the issue presented by them. More than two to one of the Senate of the United States affirmed most positively and solemnly that the Union of the States was Federal, and that in entering into it, under the Constitution, the States did so severally as free, independent, sovereign powers; that the Union was one of States, formed by States, and not by the people in the aggregate as one nation. But upon an analysis of the vote upon this resolution this authoritative exposition of Constitutional views derives increased importance. For, if we look at the vote by States, it will be seen that *eighteen States* voted for this resolution, while only *six* voted against it. One was divided and one did not vote. More than *two-thirds* of the States gave this construction of the character of the Government in 1838, in direct opposition to the views of Mr. Webster in 1833. It is true Mr. Webster was in the Senate in 1838, and did not vote for this resolution of Mr. Calhoun, then passed; but he did not take up the gauntlet thrown down by Mr. Calhoun for another contest in debate on the principles thus reannounced. Mr. Clay, however, voted for it, which shows his understanding of the nature of the Government.

The facts above stated, Mr. Editor, show how far Mr. Curtis was correct in saying any thing calculated to make the impression that General Jackson approved the principles of Mr. Webster's speeches in 1830 and 1833; and how far you are correct in stating that "Mr. Webster's view of our Constitutional System was the same with that held by the great body of the Democratic party at the time when General Jackson was President, and when a Democratic administration was respon sible for the course of the Government on a critical occasion." This party was in power in 1837 and 1838. Mr. Van Buren was President, but Mr. Calhoun was still "master of the arena" in the Senate upon the principles of his resolution of 1833, with Mr. Clay as his backer!

Here I might very properly close this communication, which is intended only to reply to Mr. Curtis' article, that was given to the public as a refutation of certain assertions of mine, in

that part of the book he took in hand to review; and *here* I should close it if he had not, in the execution of his purpose, travelled somewhat out of the limits he prescribed for himself, and in several parts of his article trenched, by indirection at least, upon other matters, questions, and principles discussed in other parts of the book, which are not to be found in the portion he undertook specially to notice. These other questions and principles, and the logical sequences claimed from all the facts in our history, first established *beyond doubt or question*, and especially from the great fact that the Constitution is a Compact between Sovereign States, are doubtless what led him to say so much about *State Secession* in connection with Sovereignty, and the opinion of Mr. Calhoun and Mr. Webster upon them. On these general topics, so introduced into his article, I wish, in conclusion, to add a few general remarks only, and ask your further indulgence for that purpose. Should Mr. Curtis, or any one else, feel disposed *directly* to assail any of the positions of the book on these other questions, either in premises or conclusions, it will be time enough then for me to undertake their defence. One of the matters so introduced, as I have stated, in Mr. Curtis' article, and which I wish now in a general way to notice, is embraced in his explanation of Mr. Webster's speech before the Supreme Court, and is expressed in the following words:

"Of course, in order to make the comity of nations, in this respect, applicable to the States of this Union in their relations with each other, it is necessary to regard each State as, for certain purposes, a nation; or, in other words, to regard it as a *sovereign* State; for such a State alone can be affected by the law of nations, as it exists when not curtailed by the sovereign will, or can declare by legislation, or by its public policy, that it does not mean to be bound by a particular rule of that law. But neither Mr. Webster nor any one else, in claiming that the States are sovereign in respect to their liability to be affected by the voluntary law of nations, in their relations to the citizens of other States, in matters of property, there by admits that they are sovereign in respect to their capacity to withdraw from the Union. It is remarkable that Mr. Stephens should have confounded these two things, which are as wide asunder as the poles."

Now it is apparent that Mr. Curtis in these remarks alludes to matters or positions of mine not in that part of the book he

undertook specially to review. There is nothing about the right or capacity of a State to withdraw from the Union in any of the extracts produced by him. This, therefore, is a sort of side-bar remark of his upon points which he eschewed to enter upon when he set out. But I say to him most respectfully, for I do entertain for him personally the highest respect and kindest regards, that there is in no part of the book any "confounding" of things of this sort, or of any things of any sort whatever. There is in it from beginning to end no meddling with things which I did not clearly perceive and do not thoroughly understand.

If there is any confusion of ideas on this subject, I apprehend that it is with himself in supposing that a State or nation can be *sovereign* for *one purpose* and *not* sovereign for *all purposes* which lie within the domain of sovereignty itself. He in another place (where he indulges in a similar course of remarks) distinctly maintains that sovereignty is *divisible*, and says that Mr. Webster so held too. If so, when or where? I certainly do not recollect of ever having seen any thing from him announcing such a doctrine.

Sovereignty is the paramount authority in any State or nation, to which all other powers or authority must yield. It is that absolute right of self-determination, in any separate and distinct political body, which, in pursuit of the well-being of its own organism, without injury to others, cannot be rightfully interfered with by any other similar body. It is that attribute of the political body which corresponds with *the will* and power of self-action in the physical body, and *by its very nature is indivisible.* Just as much so as *the mind* is, in the individual organism.

"*Sic volo, sic jubeo; stat pro ratione voluntas*"—"Thus I wish and order; my will stands in the place of reason"—is the language of sovereignty. There have been many methods adopted to give exact ideas of this attribute or essential quality of the body politic—some by definitions, and some by descriptions. But all publicists of note in both ancient and modern times agree in holding that it is in itself *indivisible.* Aristotle so held; Grotius so held; Puffendorff so held; Vattel so held;

and our own Lieber and Jameson so hold; to say nothing of others. Sovereignty and allegiance, all agree, go together. The latter follows the former. If sovereignty were divisible, then allegiance would be also. But we have it from the Head of a much higher school than that of either Mr. Webster or Mr. Calhoun, that "*no man can serve two masters.*"

The "*confounding*" in this matter is on the part of Mr. Curtis, in not recognizing the difference between the *exercise* of sovereign *powers* and sovereignty itself, from which the powers exercised emanate. The exercise of sovereign powers may be delegated, and the exercise of different powers of this kind may in this way be intrusted to different hands. In this way, and in this way only, can even the exercise of sovereign powers be divided. And in this way they are so divided in all Free States.

The Legislative power, the Judicial power, and the Executive power are all sovereign powers; and yet in this country, and in all countries where despotism does not prevail, they are thus divided, and the exercise of them is committed to separate and distinct hands, *in trust*, by delegation. Sovereignty itself, however, from which they all emanate, remains, meanwhile, *the same indivisible unit.* This is the *trinity in unity* exhibited in all properly constituted Representative Governments. Nor is the delegation to another of the right to exercise a power of any kind, whether sovereign or not, in any sense an alienation of it. The fact of its being delegated shows that the source from which the delegation proceeds continues to exist.

Mr. Webster doubtless held, as his great speech referred to shows, that the right to exercise sovereign powers may be and is delegated, and that in this way the exercise of sovereign powers may be, and is divided. Mr. Calhoun certainly so held. An essential point of difference between Mr. Webster and Mr. Calhoun on that occasion was, whether the sovereign powers intrusted to the General Government came by delegation from the sovereignty of the several States, as separate, distinct bodies politic, or nations (thus forming a Federal Republic, of which the States, as States, were the members and parties), or

from the sovereignty of the whole people of all the States, united as one body politic, or one nation.

While sovereignty itself then, by all writers of note, is held to be indivisible, and by most of them to be *inalienable*, yet it is nevertheless universally admitted by all of them that it may impose obligations upon itself. In other words, it is admitted that Sovereign States may enter into voluntary engagement with each other touching the exercise of any of their sovereign powers they choose, even to the putting of *restraints* upon their *own exercise* of them without *impairing* in *the least* or *parting* with *any portion* of their sovereignty itself. This is the basis of all treaties, conventions, or compacts of any sort between separate States or nations. This, too, is the basis of all Confederations or Federal Unions. But in these voluntary restraints upon the exercise of any of their sovereign powers, there is *no surrender of the right.* Hence, in all such cases, each State, notwithstanding these voluntarily imposed restraints, remains a perfect State, a Sovereign State, and as such continues (as maintained by Mr. Webster) "as much a component part of the laws of nations as any others;" and as *between themselves* all such States are as much subject to the laws of nations upon all questions or controversies in *the last resort*, as any other Sovereign States or nations whatever. Such is exactly the condition of the States of this Union as maintained throughout the book. So much for Mr. Curtis' idea of the divisibility of sovereignty, and of my having "confounded" on the subject "two things as wide asunder as the poles."

But again, in several parts of his article, he speaks as if he were under the impression that Mr. Calhoun considered the right of a State of our Union to withdraw, or secede, as a right *derived* from the Constitution; he seems also to be under the impression that I have defended the *rightfulness* of that measure upon the same ground. In these views he is entirely mistaken. Mr. Calhoun did maintain that *Nullification* was a *Constitutional* remedy, but not *Secession*. And if Mr. Curtis will give the other portions of the book a more careful perusal, he will see very clearly that I have not defended the *Rightfulness of Secession* upon any grounds derived from any pro-

vision in the Constitution. On page 500 he will see it thus stated:

"This right of a State to consider herself no longer bound by a Compact which, in her judgment, has been broken by her confederates, and to secede from a Union, formed as ours was, has nothing about it either new or novel. It is incident to all Federal Republics. It is not derived from the Compact itself. It does not spring from it at all. It is derived from the same source that the right is derived to abrogate a treaty by either or any of the parties to it. That is seldom set forth in the treaty itself, and yet it exists, whether it be set forth or not. So, in any Federal Compact whatever, the parties may or may not expressly provide for breaches of it. But where no such provision is made, the right exists by the same laws of nations which govern in all matters of treaties or conventions between sovereigns."

On page 496, he will see my answer to the direct question, whether a State of our Union could so act without a violation of her solemn obligations under the compact? It is in these words:

"I give this full and direct answer: she had a perfect right so to do, subject to no authority but the great moral law which governs the intercourse between independent sovereign powers, peoples, or nations."

There is nothing in the book which treats Secession as a right derived from the Constitution. It is, on the contrary, a right derived from that Sovereign Power which made the Constitution. Yours, respectfully,

ALEXANDER H. STEPHENS.

III.—REJOINDER OF MR. CURTIS.

I have read Mr. Stephens' answer to my defence of Mr. Webster against the imputation of having changed his opinions on the nature of the Constitution. My reply will be brief.

There are two theories respecting the Constitution of the United States. According to the one, it is a regular popular Government, of a limited character, formed by the grant of certain specified powers which the people of each State thought fit to sever from the whole mass of their respective sovereign-

ties; and this Government, so constituted, operates to the extent of its enumerated powers, directly upon all individuals in the United States, just as a State Government operates to the extent of the powers which its people have reserved to themselves, directly, upon all the individuals in the State. This is the Webster theory, as I understand it.

The other theory is, that the Constitution is a Compact between Sovereign States, formed by the delegation of certain political powers, which the people of the several States did not sever and alienate from the whole mass of their respective sovereignties, but which they agreed with each other, through the Constitution, should be exercised by a common depositary or agent. This is the Calhoun theory, as I understand it.

I do not mean that either of these statements comprehends all that is peculiar to the two opposite theories, but they are enough to mark, for the present purpose, the broad line of distinction between them.

All who are accustomed to reason on these subjects are perfectly aware that, if the first of these theories is the true one, there can be no lawful resistance by the people of a State, to the exercise of the powers conferred in the Constitution, and no lawful withdrawal of those powers. On the other hand, if the second of these theories is the true one, the sovereign parties to the compact who have only delegated, not alienated, some of their political powers, can break that compact whenever they see fit, incurring only the penalty which attaches to any sovereign who breaks a treaty—namely, a liability to war to be waged by the parties who adhere to the compact.

Now, Mr. Editor, I found it, in a book written by Mr. Stephens, imputed to *Daniel Webster* that, whereas in 1830–33 he held, and had always held, *and had assisted the Government of the United States to enforce*, the first of these theories, he subsequently changed his opinions, and came to regard the Constitution as a "Compact between Sovereign States." I undertook to show that there was no foundation for the suggestion; with what success the public can judge. I do not propose to repeat the arguments or the proofs.

Mr. Stephens complains that I represented him as having

charged Mr. Webster with the adoption of the doctrine and right of State secession from the Union; which he says he did not charge, and he adds that he does not suppose Mr. Webster ever believed in it. But I did not so represent Mr. Stephens' charge or assertion or position. My language was guarded and chosen. I said that he had imputed to Mr. Webster that he had become a convert, or almost a convert, *to those views of State sovereignty* on which the doctrine, or supposed right, of State secession is *founded* by those who do believe in it. This is exactly what Mr. Stephens labored to show in his book, in regard to Mr. Webster's change of views, and it is what he now writes a second argument to prove. He thinks Mr. Webster so far changed his opinions as to regard the Constitution as a "Compact between Sovereign States." This I denied. He thinks, if I understand him rightly, that Mr. Webster could regard the Constitution of the United States as being a *compact* between sovereign States and at the same time reject the right of secession. This I maintain could not be done by Mr. Webster or any other man.

Mr. Stephens finds fault with me for saying that President Jackson, in 1832–3, gave his sanction to Mr. Webster's views as maintained in 1830 against Mr. Hayne; and he finds fault with you, Mr. Editor, for saying in your editorial columns that Mr. Webster's view of the nature of the Constitution "was the same with that held by the great body of the Democratic party at the time when General Jackson was President, and when a Democratic administration was responsible for the course of the Government on a critical occasion." Mr. Stephens, in opposition to this statement, reïterates what he had quoted in his book, namely, an editorial article of the *Globe* newspaper, in which the conductors of that paper undertook to qualify and explain away the doctrines of the President's proclamation against the Nullifiers, and said that they did this "by authority." Now, sir, it is quite notorious that there were politicians in the Democratic party at that time (chiefly Southern men) who were greatly dissatisfied with Gen. Jackson's proclamation, and who affected to disbelieve that the President had asked the Judiciary Committee of the Senate for the extraordinary powers embraced

in the Force Bill, until Mr. Webster told them in the Senate, in the plainest terms, what he personally knew, that the President *had* asked for those powers, "no matter how high may be the offence." It is quite true, however, that there was no justification for the Force Bill, excepting upon the grounds taken in the previous proclamation and in the President's special message after the steps of the Nullifiers in South Carolina had produced the crisis which made it necessary for the President to act. If those grounds were true—and they were so entirely in accordance with Mr. Webster's opinions that the moment he saw them announced by the Executive he resolved to support the administration in this contest, against everybody, regardless of all former differences—then General Jackson was a patriot President, acting entirely within the scope and intent of the Constitution. If those grounds were not true, if the Constitution was a "Compact between Sovereign States," General Jackson was, as the Legislature of South Carolina after the proclamation denounced him, a tyrant and a usurper, and nullification was a lawful and constitutional remedy against the alleged wrongs of the tariff. On this great issue there was a minority in the Democratic party who did not like the President's attitude; and it is doubtless true that, for certain electioneering purposes, chiefly wanted in Virginia, the conductors of the *Globe* persuaded the "old hero" to let them put forth the article which Mr. Stephens quotes, and which was the merest *muddle*, from which no man can extract any intelligible theory of the nature of our constitutional system. To say that a President's constitutional opinions, as expressed and acted upon in important State papers, over his official signature, and carried out in acts of Congress approved by him, are to be qualified in history by an electioneering article in a newspaper, designed to soothe some of his irritated followers, is a new way of authenticating the doctrines which the official head of a great party, and the official head of the Government, meant to impress upon the Constitution as its rightful construction.

But, sir, if there were time and space for it, I could take issue with Mr. Stephens on this question of what was regarded by the great body of the Democratic party at the time in ques-

tion, as the truth, in respect to the difference between Mr. Webster and Mr. Calhoun on the nature of the Constitution. I could print a *volume* of letters addressed to Mr. Webster by prominent Democrats throughout the North and West, and by not a few in the South, both in 1830 and 1833, assuring him that they concurred in his constitutional opinions about the character of the Constitution, and thanking him in the warmest terms for what he had done in those great debates. But I will print but one. It was written to Mr. Webster by Mr. Madison after the debate of 1833, in which Mr. Stephens thinks Mr. Calhoun annihilated Mr. Webster. Mr. Madison, I presume it will be allowed, was a Democrat. At all events, he was one of the authors of the much misunderstood and misrepresented Virginia and Kentucky Resolutions of 1798. He was as much entitled to know what was good Democratic doctrine as any man then alive; and he was as much entitled to know what the Constitution is as any man who had lived then or is living now. The following letter was printed in Mr. Fletcher Webster's collection of his father's correspondence, under an erroneous date (1830), as if it referred to the reply to Hayne. It was written in 1833, after the debate with Calhoun, and it is printed with its correct date in Mr. Madison's works. I copy from the *autograph letter;* and it will be seen that there is no difference between Mr. Webster's understanding of the Constitution and Mr. Madison's. The letter also incidentally throws some light on the well-known purpose of the *Globe* article:

[Mr. Madison to Mr. Webster.]

Montpelier, *March* 15, 1833.

Dear Sir: — I return my thanks for the copy of your late very powerful speech in the Senate of the United States. It crushes "nullification," and must hasten an abandonment of Secession. But this dodges the blow, by confounding the claim to secede at will with the right of seceding from intolerable oppression.

The former answers itself, being a violation without cause, of a faith solemnly pledged. The latter is another name only for revolution, about which there is no theoretic controversy. Its double aspect, nevertheless, with the countenance received from certain quarters, is giving it a popular currency here, which may influence the approaching elections, both for

Congress and for the State Legislatures. It has gained some advantage, also, by mixing itself with the question, whether the Constitution of the United States was formed by the people or by the States, now under a theoretic discussion by animated partisans.

It is fortunate when disputed theories can be decided by undisputed facts. And here the undisputed fact is, that the Constitution was made by the people, but as embodied into the several States who were parties to it, and therefore made by the States, in their highest authoritative capacity.

They might, by the same authority and by the same process, have converted the Confederacy into a mere league or treaty, or continued it with enlarged or unabridged powers; or have embodied the people of their respective States into one people, nation, or sovereignty; or, as they did by a mixed, make them one people, nation, or sovereignty for certain purposes, and not so for others.

The Constitution of the United States being established by a competent authority—by that of the people of the several States, who were the parties to it—it remains only to inquire what the Constitution is, and here it speaks for itself. It organizes a government into the usual Legislative, Executive, and Judiciary departments; invests it with specified powers, leaving others to the parties to the Constitution; it makes the Government to operate directly on the people; places at its command the needful physical means of executing its powers; and, finally, proclaims its supremacy, and that of the laws made in pursuance of it, over the constitutions and laws of the States; the powers of the Government being exercised, as in other elective and responsible Governments, under the control of its constituents, the people and Legislatures of the States, and subject to the revolutionary rights of the people in extreme cases.

Such is the Constitution of the United States *de jure* and *de facto;* and the name, whatever it be that may be given to it, can make it nothing more nor less than what it actually is.

Pardon this hasty effusion, which, whether according or not precisely with your ideas, presents, I am aware, none that are new to you.

With great esteem and cordial salutation,

JAMES MADISON.

It would be difficult to find fault with this description of what the Constitution is, as it is impossible to find in it the doctrine of Compact between Sovereign States. Mr. Madison had too accurate a mind not to see that the right to secede at will involves a violation without cause of a faith solemnly pledged; and that the right of seceding from intolerable oppression is simply the right of revolution, which exists at all times against

all governments, be their nature what it may. Nor was Mr. Madison so inaccurate, or so fine in his political metaphysics, as not to see that the peoples of independent States can make themselves one people, nation, or sovereignty, for certain purposes and not so for others.

And now, Mr. Editor, let me conclude this controversy, so far as I am concerned, by asking to what, but to the doctrine that the Constitution was a "compact between sovereign States," do we owe the fact that we are now living under a kind of military despotism carried on through the *forms* of the Constitution? Look at what is transacting at this moment in and in regard to Virginia; her people treated exactly as if they had been a foreign sovereignty conquered in a regular war; held to be out of the Union; ordered to make a State Constitution to suit the views of Congress; ordered to ratify a certain amendment of the Federal Constitution; and held in suspense as to her relations to the Union until she has satisfied the demands of the only true "Consolidationists" that we have ever had in our political history. To what, I repeat, do we owe this state of affairs? If the Constitution was a "Compact between Sovereign States," the compact was broken by the secession of the Southern States; and it was perfectly legitimate for Congress to make war upon the *States themselves*, to conquer them as sovereign parties to a war, and, having conquered them, to suppress their governments, and to mould them just as it would mould a foreign territory conquered by arms or acquired by treaty. On the other hand, if the Constitution was what Mr. Webster always maintained it to be, Treason was an individual offence, liable as such to punishment, not by *ex post facto* laws of disfranchisement or any subsequently created disqualifications, but according to the provisions of the Constitution and the previous laws of the land; the rebellion was a mere insurrection; there could be no war upon the *States* in the sense of making conquests of the *States themselves;* and, consequently, there could be no reconstruction and no dictation of conditions involving the question whether the States were in or out of the Union after the insurrection was over. But Congress, by legislation, said to the Southern professors of the doctrine that the

Constitution is a Compact between Sovereign States: "We take you at your word; you broke the Compact; we have conquered you as States that have broken a treaty; now take the consequences, and get back into the Union when we choose to take from your necks the iron heel of our military power." Has not this been the result? And is *this* the government of our fathers? Is *this* the Constitution which Washington and Madison framed and administered; which Hamilton and Webster expounded; which Jackson prepared himself to carry out? It is neither of them. It is a *hybrid*, born of the notion that a popular government—which acts directly on individuals and rests for its sanctions on the will of the people, and has its own accurate definition of Treason drawn from the purified fountains of the common law—is an inter-State league between a group of sovereign powers, which one party may break and be punished for breaking by an international conquest. I confess, Mr. Editor, when I see or hear persons who are accounted *Democrats* maintaining State Rights upon the Calhoun theory of our system, I can only wish they would point out to me upon what possible ground of public law or political science they can complain of what has been done by Congress to the South. Perhaps there are those in the South, disciples of the doctrine of *Compact*, who, in strict consistency, do *not* complain of it. But we of the North have State Rights of our own to defend, if haply there is any remaining means of defending them, and it behooves us to know on what ground they *can* be defended. It behooves us to see that the idea of treating the Constitution as a Compact between sovereign parties to an inter-State league is the merest delusion for those who mean to confine the general government to the sphere of its legitimate and enumerated powers, and to assert the rights of the States over all other subjects. The doctrine of "Compact" was a snare which some of the great men of the South unwittingly laid for the feet of their own people. They would not accept Mr. Webster's firm position on the subject of slavery, confining it where it was before the acquisition of Texas, defending it by the unquestionable truth that, in the States where it then existed, the North could not rightfully touch it, and thus leaving

it to be gradually worn out by the imperceptible but sure operation of causes that were destined to extinguish it. They sought for political defences of this institution by enlarging its area; and they conceived, what the previous generation had not conceived, that the Constitution being a Compact between Sovereign States, two consequences would follow: *first*, that the Constitution, *proprio vigore*, would give them a right to carry slavery into the public domain, which was the common property of States thus united; *second*, that, if this right were not admitted, the compact could be broken by secession, and that there would be a case justifying that step. For all this there was more or less provocation and incitement in what was going on in the North; but the grand error that was committed at the South was in not seeing that the true defence of slavery, as a State institution, rested like the defence of all other State Rights, upon the doctrine that the Constitution is no compact, but a fundamental law, limiting the sphere of the general government by the sanctions of enacted law, and containing, as part of the same enacted law, the strenuously asserted principle that all the powers of government, not embraced in the Constitution, and not prohibited by it to the States, are reserved to the States or the people. And now that the doctrine of compact has been played out to its legitimate and inevitable end; now that the very result has come which Mr. Webster foresaw and foretold; now that our institutions are converted, perhaps beyond redemption, into what he predicted they would become if the practical operation of Mr. Calhoun's theories should produce a civil war; now that we have reaped the fruits of these theories, by the excuse which they have afforded for a kind of government that "out-herods Herod" in the assertion of the compact principle, and makes the government of our fathers a military colossus—it is, I admit, with some impatience that I hear *Mr. Webster* claimed as a believer in the doctrine which he spent more than twenty years of his life in resisting, and which he knew would ruin us at last.

G. T. C.

New York, *September*, 1869.

IV.—Sur-rejoinder of Mr. Stephens.

Liberty Hall,
Crawfordville, Ga., *September* 25, 1869.

Messrs. Editors of the New York World:

In your paper of the 13th instant, which reached me a few days ago through the kind attentions of a friend, I see what purports to be a rejoinder of Hon. George T. Curtis to my reply to his article in review of that part of my book upon the late war between the States which relates to the opinions of Mr. Webster, as expressed in 1833, upon the subject of the Constitution of the United States being a Compact between the States, and his subsequent modification of those opinions or views.

In this "rejoinder," so called, Mr. Curtis has, as your readers perceive, widely wandered from the points and issues between us raised by his review and my reply to it. He makes but one allusion in it to any of them. He has virtually abandoned his own chosen and limited topics of discussion—gone off into entirely new matter, and after presenting other and altogether new questions about two different theories of government, &c., concludes, so far as he is concerned, the controversy on the points he had at first raised.

Now, I am quite as little inclined to pursue a *rambling* controversy, as Mr. Curtis evidently is to stand by the results of the one which he commenced with so much zeal and ardor; but from which he so "impatiently" retires. The rule with me is: One thing at a time, and all things in their order. Discussions are seldom either entertaining or instructive which are not confined as they advance step by step to the immediate points under consideration at the time. In this way only can any real progress ever be made towards the establishment of any truth by reason and argument.

It is not my intention, however, to permit the new questions now presented by him to pass unnoticed. They are themselves of too much importance. But, before taking them up, it is proper first to see how matters stand between us upon

those heretofore raised by him. It is better, in discussions as in navigation—to use one of Mr. Webster's illustrations—to make a reckoning and see where we are, before taking a new departure. For this purpose I propose to recapitulate and examine the previous points of our controversy as briefly as possible in their order.

First, the three points raised by him in his review; and secondly, the two raised by me on him in the reply. Let these facts, then, be kept in mind by your readers:

1. Mr. Curtis, in his review, said:

"But I may be permitted to express the astonishment with which I have read a portion of Mr. Stephens' recent publication, in which he claims that Mr. Webster, in the later years of his life, changed his opinions respecting the nature of the Constitution, and became a convert, or almost a convert, to the views of State sovereignty, on which the right of State secession from the Union was claimed by Mr. Calhoun and his disciples as a *right* under the Constitution."

In the reply, issue was joined with Mr. Curtis upon the fact that there was any such statement, assertion, or claim in any part of the book to which he referred. It was also denied that Mr. Calhoun or his disciples ever claimed the right of State Secession from the Union as a right under the Constitution. Of Mr. Webster, it was simply affirmed that, in 1833, he had held the position that the Constitution was not a Compact between the States, and that, subsequently, in his argument before the Supreme Court, and in his letter to the Barings, he had used language which, in my opinion, showed that he had modified the opinions so previously expressed by him upon that point. It is also affirmed in the book that, in 1851, at Capon Springs, he spoke in unequivocal language of the Constitution as a Compact to which the States were parties. The proofs were given. Mr. Curtis admits their correctness. Do they not fully sustain what was affirmed in the book? At any rate thus stands the issue between us; and how does Mr. Curtis treat it in his rejoinder? Does he pretend to show that there is any thing in the book to sustain his statement, as it stands in the review, or any thing which should have caused astonishment to anybody as well acquainted with the facts as he ought to

have been? Does he even undertake to show that he was correct in declaring that Mr. Calhoun or his disciples claimed the right of State Secession under the Constitution? Does he make any answer to my respectful appeal to him to give any explanation he can imagine Mr. Webster could possibly have given of his speech before the Supreme Court referred to, without admitting a change of his views as expressed in 1833? He does not, but goes off in his sort of dissertation upon two theories concerning the nature of the government. Now, I say in passing, right here, to Mr. Curtis, that these two theories of the government have nothing to do with this issue between us. That was the isolated point whether Mr. Webster had or had not modified or changed his opinions upon the subject of the Constitution being a Compact between the States. I ask him also, as well as your readers, if I am not warranted by his silence on that point in coming to the conclusion that he cannot explain Mr. Webster's position in 1839 without admitting the change of views ascribed to him in the book? That was the point at issue between him and me. I do come to this conclusion, and am perfectly willing, therefore, so far as I am concerned, to let the controversy on that point rest just where and as it stands.

2. Mr. Curtis, in his review, said:

"As an historian, Mr. Stephens is singularly unfortunate. He cited Mr. Webster for the purpose of proving that he had come, in 1851, to regard the *Constitution* as a *compact* between the States, yet he overlooked the passages in the same speech which showed that he did *not* so regard it."

This was a grave charge. The Italics are his. The reply was that, if there were any passages in the speech (the Capon Springs speech) from which the citation was made that did show, or tended even to show, that he did not regard the Constitution as a Compact between the States, as his language cited clearly showed that he then so held it to be, they had escaped my attention at the time the citation was made; and after the most diligent search I was still unable to find in any part of the speech any such qualifying language as he intimated was to be found in some other portions of it.

How has Mr. Curtis met this issue? Has he undertaken to point out in the speech any such passages as he said I had overlooked? He has not. He has not produced one word from the speech which shows, or tends to show, that Mr. Webster did not mean, as I understood him by the language cited, to declare that the Constitution was a Compact between the States, and that "a bargain cannot be broken on one side and still bind the other side?"

The "rejoinder" is entirely silent upon that subject. The conclusion to which all intelligent readers must come, it seems to me, is that Mr. Curtis gives up that point in issue between us. Not without some restlessness, it is true, which is evinced in the expression of "*impatience*" with which he hears "Mr. Webster claimed as a believer in the doctrine which he spent more than twenty years of his life in resisting, and which he knew would ruin us at last." This is, perhaps, what caused him to change his ground and endeavor to relieve his position as well as he could by plunging into other matters.

Now, the truth, Mr. Editor, is that the Constitution of the United States is a Compact between Sovereign States. This is a great and an important fact in our history. Upon it does depend the nature and character of our government. Mr. Webster's position on that subject in 1833 is utterly untenable. Whether he subsequently modified or changed his opinions upon it or not, however, is a collateral point altogether. The great truth that it is such a Compact is established in the book referred to as clearly as any historic fact can be in this or any other country. The argument by which this fact is so established, Mr. Curtis does not pretend to answer. He has not, as yet, attempted to do it, and I here repeat that if he or anybody else shall attempt directly to assail it, either in premises or conclusions, I hold myself in readiness to meet the assault, let it come from whatever quarter it may. In the book it was barely incidentally stated as my opinion that Mr. Webster had changed his views upon that subject; but whether he had changed them or not has no bearing whatever upon the argument itself, or any link in the chain of its structure. It was to the incidental remarks in the book, upon his supposed change of views,

that Mr. Curtis took exception. How much he has taken by his motion the public may now judge. I feel perfectly content with this issue also as it stands.

3. Mr. Curtis, in his review, stated that I had committed "a singular error" in the book in regard to the order of the debate between Mr. Webster and Mr. Calhoun in the Senate in 1833, and argued from a version he gave of it that no regular or general rejoinder to Mr. Calhoun's speech was called for from Mr. Webster.

The reply to this by me set forth the facts of the case. These show that no such error was committed in the book. They show that Mr. Calhoun's speech did present new views never before presented in the Senate by him, which not only called for but demanded an answer, or an abandonment by Mr. Webster of his positions.

To this issue Mr. Curtis makes no allusion whatever. Is not the conclusion legitimate that he now admits there was no error in the book on that point? I so regard it.

These are all the points and inaccuracies in the book specified in the review. So much for them, their merits, and the final disposition of them on my part.

Secondly. Let us now proceed to see how the issues stand on those made on the other side. In the reply two errors on his own part are set forth.

1. Mr. Curtis stated in the review that the revenue laws of the United States had been obstructed in the port of Charleston, South Carolina, by the nullification acts of that State in 1832.

In my reply it was shown that these acts never went into operation at all, and could not have obstructed the revenue laws. The protective policy was agreed to be abandoned in Mr. Clay's Compromise Bill, which passed before these acts under their extension were to go into operation. South Carolina being satisfied with that abandonment, so agreed upon, these acts were repealed before they ever went into effect.

The rejoinder is silent upon this point. The conclusion to be drawn from this is, that Mr. Curtis admits that he committed an error himself in his attempt to show that I had committed one.

2. Mr. Curtis made a statement in the review which implied that General Jackson approved the position of Mr. Webster in his debate with Mr. Calhoun that the Constitution was not a Compact between the States.

In my reply it was shown by direct proof that General Jackson did not give that part of Mr. Webster's speech any such approval.

In his rejoinder Mr. Curtis admits the proof offered by me, showing that General Jackson did not approve that part of Mr. Webster's speech. This proof was the "authorized" explanation of certain parts of his proclamation by General Jackson himself, which appeared in the Washington *Globe* newspaper. But while he admits the correctness of the proof, he says that the "old hero" was persuaded by the conductors of that paper to let them put forth this explanation for certain electioneering purposes; and that the explanation, upon the whole, was "the merest *muddle*, from which no man can extract any intelligible theory of the nature of our constitutional system."

Muddle or no *muddle*, as a whole, in presenting a "theory" of the nature of the government, it was certainly very clear and explicit on the point at issue between us. This, by the by, is the only point in all the issues between us to which Mr. Curtis makes the slightest allusion in his so-called "rejoinder"; and after thus disposing of this very pointed proof so offered, which showed he was wrong, he goes into a defence of his position, which amounts to about this: that if General Jackson did not approve that part of Mr. Webster's speech, other distinguished Democrats did—which could be shown by letters in his possession which would fill a volume if he should publish them. He chooses, however, to publish but one of this character, and that one was from Mr. Madison.

Now, to all that is said on this point in the rejoinder, I have this to submit in answer: 1. If Mr. Madison, or ever so many other distinguished Democrats did approve that part of Mr. Webster's speech, it is no evidence that General Jackson did; especially in the face of his explicit declaration that he did not, and can have no bearing whatever upon the point between us. 2. Mr. Curtis was much more "unfortunate," I think, as a

"logician" in citing this letter to Mr. Madison, to sustain him in his issue with me, than he supposed me to be "unfortunate" "as an historian" in citing Mr. Webster's Capon Springs speech in the book; for this letter of Mr. Madison shows that even he did not concur with Mr. Webster on the main point in issue between him and Mr. Calhoun, and which was in issue between Mr. Curtis and myself in relation to the extent of General Jackson's approval of the principles of Mr. Webster's speech on that occasion. That point was as to the Constitution being a Compact between the States. On this point Mr. Madison's language in the very letter produced by Mr. Curtis is this:

"It is fortunate when disputed *theories* can be decided by *undisputed facts*. And here the undisputed *fact* is that the Constitution was made by the people, *but as embodied in the several States* who were *parties to it*, and, therefore, made by the *States* in their *highest authoritative capacity*."

The italics are mine. This part of the letter so adduced by Mr. Curtis, therefore, shows clearly that whatever other motives Mr. Madison may have had in thus congratulating Mr. Webster for his speech, so far as it related to the doctrine of Nullification, and its general tenor against Secession as a politic or practicable remedy for abuses of Federal power, he evidently intended to set him right on one point, and that was that the Constitution was not made by the whole people of the United States as embodied in one nation, as he had contended, but that it was "*made by the States in their highest authoritative capacity!*" That is, in their *sovereign capacity*, and, being so made by them, was of necessity a Compact between them!

This is the clear import of this language of Mr. Madison, in which he meant nothing more than to reäffirm the principles of his own celebrated resolutions in the Virginia Legislature in 1798, and his report on them in 1799. It is true, Mr. Madison was opposed to the doctrine of Nullification, as, perhaps, three-fourths of the Democratic party in the United States were. He was also opposed to Secession as a proper or practicable remedy against the abuses of Federal power in the matter of the

protective policy, as were a large majority of even Southern Democrats.

Mr. Webster's speech, so far as it related to these questions and *in this view of them*, was approved by this entire class of Democrats, North and South; but neither Mr. Madison, nor any other distinguished Democrat anywhere, from Gen. Jackson and Mr. Livingston, who wrote his proclamation, down to the lowest on the list, ever approved in terms, I venture to say, that part of the speech which denied that the Constitution was a Compact between the States. If Mr. Curtis can produce one letter out of the mass he has from men of his class which does so expressly endorse that part of Mr. Webster's speech, he is respectfully asked to do so. The one which he selected from all the rest for this purpose, certainly does not. Mr. Madison, in this congratulatory letter, delighted with certain portions of Mr. Webster's speech, and the high tone of patriotism which breathed through the whole of it, seems, in the spontaneous expression of his admiration of those portions which pleased him so much, to have acted, in not permitting even this occasion to pass without inculcating an important truth, in a polite way, upon the very wise maxim of Pope:

> "*Blunt truths* more mischief than nice falsehoods do:
> Men must be taught as if you taught them not,
> And things unknown proposed as things forgot."

Whatever Mr. Curtis may think of it, I very much question if Mr. Webster did not see and feel the point and force of this language of Mr. Madison, so courteously and urbanely expressed. He must have seen and must have felt that, while this great statesman was highly gratified with the speech, as a whole; yet, upon the main point at issue between him and Mr. Calhoun, his distinguished correspondent differed *toto cœlo* with him.

So much, therefore, upon this point, the only one of the former issues between Mr. Curtis and myself to which he has alluded in his rejoinder. I have gone through with all of them. Your readers will see clearly just how the controversy upon all of them stands at present. Here I take my leave of them, and

am perfectly willing to let them rest just where and as they stand, if Mr. Curtis is.

I now propose to take some notice of his new matter. In doing this, I premise, by saying to Mr. Curtis and to your readers that the questions which are involved in arriving at a correct knowledge of the nature of the Government of the United States are not speculative questions growing out of theories of any sort. They are questions of fact, as Mr. Madison says in his letter to Mr. Webster—questions of undisputable facts, to be settled by evidence of the highest order. This evidence is to be found in the records and the documentary history of the country, against which no speculations or theories can have any weight with those whose sole object is the investigation of truth. The proper solution of all these questions requires no resort to the subtleties of metaphysics in any way. They are clear and plain, when properly presented, to the commonest understanding—even to "the wayfaring man, though he be a fool." They are only mystified when men, by resorting to speculations, make a "*muddle*" of their theories upon them. These are the questions which are discussed in other parts of the book, which Mr. Curtis did not undertake to review; and the indisputable facts which must decide them, according to the inexorable principles of logic in the forum of reason, are therein fully produced and regularly presented. These facts, thus arrayed and set forth, establish the conclusion, beyond the power of successful assault, that the Government of the United States is a Government of States, made by States and for States—a Federal Republic in every sense of the term, or "a Confederated Republic," as Washington styled it, which means the same thing. It is, in other words, just such a union of States as Vattel described in the quotation cited in the reply. This the facts of our history show.

It is further maintained in the book, as a sound and indisputable principle, that where States are thus united, when one or more of them palpably and intentionally violate any of the terms or articles of their union, or fail to fulfil their obligations according to those terms, the others are thereby absolved from their obligations under the Compact, and have a perfect right to

withdraw from a Union so formed—if, in so doing, they do their former associates no other injury than that which results from the loss to them of the advantages which the Union secured to them; and they have this perfect right so to withdraw without any rightful or just power or authority on the part of their former confederates to prevent their withdrawal.

It is also maintained in the book, as an unquestionable fact in our history, that one of the articles of our Union was openly and avowedly broken by several of the Northern States. The article or clause in the Constitution so violated was one "without which," as declared by Judge Story from the bench of the Supreme Court of the United States, "the Union never would have been formed."

Upon these points of our history and indisputable principles of public law, of reason, of right, and of justice, and not upon any "muddled" theory of any sort, it is maintained in the book that the war which was inaugurated and waged by the Northern States against the Southern States to prevent their withdrawal from the Union, after their own open and palpable violation of their Constitutional obligations, was utterly without rightful authority, either by the Constitution or the laws of nations; that it was nothing short of a gross and wanton aggression against unoffending neighboring States; founded entirely upon usurpation, and in direct violation of the fundamental principles upon which American independence was declared and achieved. —That independence was not a national independence of the people of all the Colonies united in one nation, as speculative writers by "*muddled*" theories have attempted to represent it to be; but it was the independence of the States severally and separately. The principle upon which it rested, was the Sovereign Right of Local Self-Government in the people of each Colony or State. The moving cause to it was the assault made by the British Parliament upon the chartered rights of Massachusetts. It was against this that the "cry" was raised in Virginia, and rang in shouts from the St. Croix to the Alatamaha, from the seaboard to the Alleghanies: "The cause of Boston is the cause of us all!" The cause of Boston then was the Sovereign Right of Local Self-Government. This was the cause which

triumphed by the joint action of all the States in the achievement of their separate sovereignty and independence.

Mr. Curtis, in his rambling through the mazes of the new matter introduced in his "rejoinder," is pleased to say:

"'If the Constitution was a Compact between Sovereign States,' the Compact was broken by the secession of the Southern States; and it was perfectly legitimate for Congress to make war upon the States themselves, to conquer them as sovereign parties to a war, and, having conquered them, to suppress their governments, and to mould them just as it would mould a foreign territory conquered by arms or acquired by treaty."

Further on in the same strain he says:

"I confess, Mr. Editor, when I see or hear persons who are accounted *Democrats* maintaining State Rights upon the Calhoun theory of our system, I can only wish they would point out to me upon what possible ground of public law or political science they can complain of what has been done by Congress to the South."

Now, in reply to this, you will allow me to say to Mr. Curtis, that I will promptly undertake to comply with his wish in this respect. This I do, however, not as one accounted a Democrat "upon the Calhoun theory of our system," but as one who presumes to know something of the established principles of "public law" as announced by those to whom we are indebted for all we have of what may be called "political science."

The book referred to shows that he need not have qualified his first sentence quoted above with an "if." That "if" is forever disposed of, unless the argument in the book is shown to be erroneous. This neither he nor anybody else has as yet attempted to do, so far as I know. The Constitution is a Compact between Sovereign States, and from this very fact the enormity of the wrongs and outrages which have been committed by Congress upon the South do but the more distinctly and glaringly appear! This contract was not broken, however by the Secession of the Southern States, as Mr. Curtis so flippantly assumes. I cannot permit myself to believe that he would, upon cool reflection, venture to stake his reputation upon the denial of the correctness of the position of the book, that it was first intentionally and avowedly violated by several of the Northern States. No one knows better than Mr. Curtis, how

devoted I was to the Union of the States under the Constitution, and how he and I labored together in the fall of 1860 to get the "offending States" to return to the discharge of their obligations under it, that the Union might be preserved. He knows how utterly opposed I was to Secession as a remedy for even this breach of faith by the Northern members of the Union; not a whit less so than Mr. Madison was to the like remedy for the wrongs and oppressions of the Protective policy. He knows equally well, too, that I then held as I now do, whether he did or not, that the "aggrieved States" would be perfectly justified, upon the principles of public law and natural justice, in a resort to this remedy in consequence of this continued breach of the Compact, if they, in their sovereign capacity, should so decide to do; just as I doubt not Mr. Madison would have held in the case of the Protective policy if the abandonment of the principle upon which it was based had not been agreed upon, as it was, and if in consequence of its continuance this "*ultima ratio*" had been resorted to by the States whose vital interests were supposed to be affected by it, even though it had been done against his judgment as to its expediency. He knows full well that Secession was no favorite remedy with me for evils of any sort under the Union. He knows also that, notwithstanding all the efforts that were made everywhere, the "offending States" would not, and did not right themselves in the matter wherein they were so grossly derelict. And whether he will, or will not, now seriously deny that that Constitution was thus openly and avowedly violated by several of the Northern States, cannot affect the great fact in our history that it was. This will forever remain one of the imperishable truths in the annals of this country.

The Compact was first broken by more than half of the very States which projected and waged this war professedly with no object but to make their confederates stand to their part of the bargain, while they most notoriously, if not shamefully, repudiated their own obligations under it!

Was not this a great wrong to the Seceding States, as well as a huge crime against humanity? Does the history of the world present a parallel of insolent and arrogant iniquity? The

use of power by which this most monstrous outrage upon right and justice was perpetrated resulted in no way from the Compact view of the Constitution. It sprang from, and was claimed from, that "muddled" theory which assumed that the States, by the adoption of the Constitution, had alienated a portion of their sovereignty beyond their power of a rightful resumption of it, and that that portion retained must yield to the portion surrendered. This theoretic claim of power, in violation of the fundamental principles of the whole structure of the Government, was the prime and leading cause of the war. To this is to be attributed all the enormities of its inception, prosecution, and present results. Moreover, the Compact view of the Constitution did not originate with Mr. Calhoun, or Democrats of his faith, respecting State Rights. It originated with the framers of the Constitution itself, and was not denied by any man of note for forty years of our history. It was the view of Hamilton, Ames, Ellsworth, Sherman, Madison, Jefferson, and Washington, to say nothing of others. It was because he thought this construction, which has in later times been put upon it through the subtleties of a "muddled" theory, would be put upon it, that Patrick Henry opposed its ratification. But it was denied by the friends and advocates of the Constitution, in every State Convention where the question was raised, that this construction could possibly be put upon it, in the face of the notorious facts attending its formation. To quiet apprehensions, however, the Tenth Amendment was very soon unanimously adopted by the States, to settle that question forever.

The great truths relating to the nature and character of our Federal Republic, peculiar in many respects as it is, were distinctly set forth by Mr. Jefferson in his Kentucky Resolutions of 1798, long before the days of Mr. Calhoun. They are based upon the fact, that the Constitution is a Compact between Sovereign States. These Resolutions constituted the creed of the Democratic party of that day, and of the only true Democratic party or Constitutional party which has ever existed in this country since, or ever will hereafter. Under the administration of the Government according to the principles of these Resolutions, for sixty years, no country in the world ever was more

happy, peaceful, and prosperous than ours was; and I take this occasion to say to Mr. Curtis that neither he nor anybody else may ever expect, or even hope for, a restoration of those days of peace, quiet, and happiness, with real Constitutional Liberty, until the administration of the Federal government is brought back to these principles: not by force, not by arms, but by the expulsion from power of those who have committed these monstrous usurpations. This expulsion is to be by the people at the ballot-box! In this way to-day, if they were wise, the "cry" would go forth throughout the entire North: "The cause of Virginia is the cause of us all?" For they may depend upon it that what is now being enacted in that old and renowned Commonwealth, as well as in other Southern States, will sooner or later be enacted in their own States, if that theory and claim of power under it, from which all these outrages legitimately spring, is not entirely and speedily abandoned. It is utterly inconsistent with that Sovereign Right of Local Self-Government on the part of the several States of this Union upon which our entire system of American free institutions is based, and upon which alone these institutions can be maintained and perpetuated.

ALEXANDER H. STEPHENS.

ARTICLE IV.

MR. STEPHENS' REPLY TO HON. HORACE GREELEY'S CRITICISM ON THE WORK.

LIBERTY HALL,
CRAWFORDVILLE, GA., *August* 17, 1869.

Messrs. Editors of the Constitutionalist, Augusta, Ga.:

WILL you please allow me the use of your columns to reply to an article in a late number of the New York *Tribune*, written by the Hon. Horace Greeley, and which requires some notice from me.

In this article, Mr. Greeley, after alluding to my work upon the "War between the States," and late letters in reply to Judge Nicholas upon the same subject, goes on to say:

"Mr. Stephens' theory is, that the Union was a mere league of Sovereign Powers; and, of course, dissoluble at the pleasure of those Powers respectively — of a minority, or, in fact, of any one of them, so far as that one is concerned. And he quotes sundry conspicuous Republicans — among them, Abraham Lincoln, Benjamin F. Wade, and Horace Greeley — as having, at some time, favored this view.

"Mr. Stephens is utterly mistaken. Leaving others to speak for themselves, we can assure him that Horace Greeley never, at any moment of his life, imagined that a single State, or a dozen of States, could rightfully dissolve the Union. The doctrine of Horace Greeley, which Mr. Stephens has confounded with State Sovereignty, is that of *Popular* Sovereignty, or the right of a *people* to recast or modify their political institutions and relations — the right set forth by Thomas Jefferson in the Declaration of American Independence, as follows:

"'We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of Government becomes destructive of these ends, it is the

right of *the people* to alter or abolish it, and to institute a new Government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness.'

"This doctrine of Jefferson's we have ever received; and we have held it precisely as it reads. The same is true, we presume, of Messrs. Lincoln, Wade, and other Republicans. Mr. Stephens may say it justifies the so-called Secession of the South; we think differently. We hold that Secession was the work of a violent, subversive, bullying, terrorizing minority, overawing and stifling the voice of a decided majority of the Southern people. The facts which justify this conclusion are embodied in *The American Conflict*, more especially in vol. i., chap. xxii. According to Mr. Stephens' conception, a majority of the people of Delaware, consisting of less than 100,000 persons, might lawfully dissolve the Union; but the whole population of New York south of the Highlands—at least 1,500,000 in number—could do nothing of the kind. Mr. Stephens' may possibly be the true doctrine, but it certainly never was ours, nor of any Republican so far as we know. The right we affirm is not based on the Federal Constitution, but is before and above any and all Constitutions."

I quote him in full on the points to be commented on, that your readers and the public may thoroughly understand them, and be able to judge fairly and justly between us, and come to a correct conclusion as to whether *I* or *he* was or is mistaken in the premises.

Now what is affirmed by me in the first volume of the "Constitutional View of the Late War between the States," and what Mr. Greeley, with other Republicans, is quoted therein to sustain, is this:

"Men of great ability of our own day—men who stand high in the Republican ranks at this time, who had and have no sympathy with the late Southern movement, are fully committed to the *rightfulness* of that movement. Mr. Lincoln himself was fully committed to it. Besides him, I refer you to but two others of this class, now prominent actors in public affairs. They are Senator Wade, of Ohio, at this time Vice-President of the United States, and Mr. Greeley, of the New York *Tribune*, who is 'a power behind the throne greater than the throne itself.'"

Then after quoting Senator Wade, with comments on his utterances, I go on to quote from the New York *Tribune*, of the 9th of November, 1860, an article which is acknowledged by Mr. Greeley to be his, and published in his history of the war, the "American Conflict," page 359, vol. i., as follows:

"The telegraph informs us that most of the Cotton States are meditating a withdrawal from the Union, because of Lincoln's election. Very well: they have a right to meditate, and meditation is a profitable employment of leisure. We have a chronic, invincible disbelief in Disunion as a remedy for either Northern or Southern grievances. We cannot see any necessary connection between the alleged disease and this ultra-heroic remedy; still, we say, if any one sees fit to meditate Disunion, let him do so unmolested. That was a base and hypocritic row that was once raised at Southern dictation, about the ears of John Quincy Adams, because he presented a petition for the dissolution of the Union. The petitioner had a right to make the request; it was the Member's duty to present it. And now, if the Cotton States consider the value of the Union debatable, we maintain their perfect right to discuss it. Nay: we hold with Jefferson, to the inalienable right of Communities to alter or abolish forms of Government that have become oppressive or injurious; and, if *the Cotton States shall decide that they can do better out of the Union than in it, we insist on letting them go in peace. The right to secede may be a revolutionary one, but it exists nevertheless; and we do not see how one party can have a right to do what another party has a right to prevent. We must ever resist the asserted right of any State to remain in the Union, and nullify or defy the laws thereof; to withdraw from the Union is quite another matter.* And, whenever a considerable section of our Union shall deliberately resolve to go out, we shall resist all coërcive measures designed to keep it in. We hope never to live in a Republic, whereof one section is pinned to the residue by bayonets.

"But, while we thus uphold the *practical liberty*, if not the abstract right of *Secession*, we must insist that the step be taken, if it ever shall be, with the deliberation and gravity befitting so momentous an issue. Let ample time be given for reflection; let the subject be fully canvassed before the people; and let a popular vote be taken in every case, before Secession is decreed. Let the people be told just why they are asked to break up the Confederation; let them have both sides of the question fully presented; let them reflect, deliberate, then vote; and let the act of Secession be the echo of an unmistakable popular fiat. A judgment thus rendered, a demand for Separation so backed, would either be acquiesced in without the effusion of blood, or those who rushed upon carnage to defy and defeat it, would place themselves clearly in the wrong."

I give above, this quotation in full, as I did in the book referred to, that no injustice may be done to him by partial extracts.

What I quoted him to sustain, was, as clearly appears, the *rightfulness of Secession* in itself, and no particular *theory* of mine touching the principles upon which it was based. Does

not the article from his own paper and book, above spread before your readers, fully sustain my affirmation for which the quotation was made? *Was I "utterly mistaken?"* Or did I in any way confound State Sovereignty with Popular Sovereignty? What difference Mr. Greeley sees between State Sovereignty and Popular Sovereignty I know not. By State Sovereignty I understand the sovereignty of the people composing a State in an organized political body. But what I affirmed, and quoted him to sustain, rested upon no distinction between these phrases. It was simply as to the *rightfulness* of the act in itself, on the part of the people of a State, without reference to the *source of the right.* My comments on this question in the book, page 518, are as follows. I give them in full also, that it may be clearly seen that no injustice was done to him:

"What better argument could I make to show the rightfulness of Secession, if the Southern States, of their own good will and pleasure, chose to resort to it, even for no other cause than Mr. Lincoln's election, than is herein set forth in his own pointed, strong, and unmistakable language? It is true, he waives all questions of Compact between the States. He goes deeper into fundamental principles, and plants the right upon the eternal truths announced in the Declaration of Independence. That is bringing up principles, which I have not discussed, not because I do not endorse them as sound and correct, to the word and letter, but because it was not necessary for my purpose. Upon these immutable principles, the justifiableness of Georgia in her Secession Ordinance of the 19th of January, 1861, will stand clearly established for all time to come. For if, with less than one hundred thousand population, she was such a people in 1776 as had the unquestionable right to alter and change their form of Government as they pleased, how much more were they such a people, with more than ten times the number in 1861? The same principle applies to all the States which quit the old and joined the new Confederation. Mr. Greeley here speaks of the Union as a *Confederation* and not a *Nation.* This was, perhaps, the *unconscious* utterance of a *great truth* when the *true spirit* was moving him.

"The State of Georgia did not take this step, however, in withdrawing from the Confederation, without the most thorough discussion. It is true it was not a dispassionate discussion. Men seldom, if ever, enter into such discussions with perfect calmness, or even that degree of calmness with which all such subjects ought to be considered. But the subject was fully canvassed before the people. Both sides were strongly presented. In the very earnest remonstrance against this measure made by

me, on the 14th of November, 1860, to which you have alluded, was an appeal equally earnest for just such a vote as he suggests, in order that the action of the State on the subject might be 'the echo of an unmistakable popular fiat.' On the same occasion I did say, in substance, just what he had so aptly said before, that the people of Geogia, in their Sovereign capacity, had the right to secede if they chose to do so, and that in this event of their so determining to do, upon a mature consideration of the question, that I should bow in submission to the majesty of their will so expressed!

"This, when so said by me, is what it seems was 'the dead fly in the ointment' of that speech, so sadly 'marring its general perfume.' This was 'the distinct avowal of the right of the State to overrule my personal convictions and plunge me,' as he says, 'into treason to the Nation.'

"Was not the same 'dead fly in the ointment' of his article of the 9th of November, only five days before? And if going with my State in what he declared she had a *perfect right* to do, plunged me into *treason* to the *Nation*, is he not clearly an accessory before the fact, by a rule of construction not more strained than that laid down in the trial of State cases by many judges not quite so notoriously infamous as Jeffreys? By a rule not more strained than that which would make out treason in the act itself! But I do not admit the rule in its application either to the accessory or the principal."

So much for the allegation that *I* was *utterly mistaken!*

Now let me turn upon Mr. Greeley and ask, how it is with him in the premises? Was *he* not "*utterly mistaken*" when he said so vauntingly for himself in the article now under review, "*Horace Greeley never at any moment of his life imagined that a single State or a dozen of States could rightly dissolve the Union!*"

Did he not expressly say, on the 9th of November, 1860, through the columns of the *Tribune*, that "*if the Cotton States shall decide that they can do better out of the Union than in it, we insist on letting them go in peace. The right to secede may be a revolutionary one, but it exists nevertheless;* and we do not see how one party can have *a right* to do what another party has a right to prevent. We must ever resist the asserted right of any State to remain in the Union, and nullify or defy the laws thereof; *to withdraw from the Union is quite another matter!*"

But, besides what I quoted him as saying, did he not, on the

17th day of December, 1860, three days before the Secession of South Carolina, in the *Tribune*, assert:

"*If it*" (the Declaration of Independence) "*justified the Secession from the British Empire of three millions of colonists in* 1776, *we do not see why it would not justify the Secession of five millions of Southrons from the Federal Union in* 1861. *If we are mistaken on this point, why does not some one attempt to show wherein and why?*"

Again: Did he not in the *Tribune*, on the 23d day of February, 1861, five days after the inauguration of President Davis, at Montgomery, use this language:

"*We have repeatedly said, and we once more insist, that the great principle embodied by Jefferson in the Declaration of American Independence, that Governments derive their just powers from the consent of the governed, is sound and just; and that if the Slave States, the Cotton States, or the Gulf States only, choose to form an Independent Nation,* THEY HAVE A CLEAR MORAL RIGHT TO DO SO."

These quotations from the *Tribune* I see set forth by ex-President Buchanan in his work entitled "Buchanan's Administration," page 97. I take it for granted they are correct. Then how, in the face of all these proofs, can the *Tribune* now say, that "*Horace Greeley never, at any moment of his life, imagined that a single State, or a dozen States, could rightfully dissolve the Union.*"

Is not this a full and explicit acknowledgment of the *right* of a State to *withdraw or secede?* Did the Southern States ever attempt to dissolve the Union in any other way than by *peaceably seceding or withdrawing from it?* Mr. Greeley knows, and the world knows, that they did not.

One other remark upon this editorial now under consideration. In it Mr. Greeley says:

"According to Mr. Stephens' conception, a majority of the people of Delaware, consisting of less than 100,000 persons, might lawfully dissolve the Union, but the whole population of New York, south of the Highlands — at least 1,500,000 in number — could do nothing of the kind. Mr. Stephens' may possibly be the true doctrine, but it certainly never was ours, nor of any Republican, so far as we know. The right, we affirm, is not based on the Federal Constitution, but is before and above any and all Constitutions."

Just so, let it be said to Mr. Greeley, with the doctrine advanced by me in the book referred to! It is not based on the Federal Constitution, but upon the authority that made that Compact. It is based upon principles existing "before and above any and all Constitutions." It is based upon the Paramount Authority (call it Popular Sovereignty or State Sovereignty, or by any other name) by which all organized States or Peoples can *rightfully make or unmake State or Federal Constitutions* at their pleasure; subject only to the great moral law, which regulates and governs the actions and conduct of nations!

My conception, however, involves no such nonsense as that exhibited in his statement of it, touching the relative populations of the whole State of Delaware, and a portion only (being a large minority, however,) of the population of the State of New York. Populations in this respect must be looked to, and considered in their *organized* character. The doctrine advocated by me with all its corollaries rests upon the *fact* that Delaware, however small her population, is a perfectly organized State—is a Sovereign State—and as *such* is an integral Member of our Federal Republic, and that New York with her ever so many more people is no more. The doctrine is that ours is indeed a Federal Republic—constituted, not of *one people in mass*, as a single Republic is, but composed of a number of separate Republics.

In this Federal Republic, the little Republic of Delaware by the Constitution of the United States, which sets forth the terms of the Compact between these several Republics composing the Union, has just as much *political power* in the enactment of all Federal laws, as the great Republic of New York has, without any regard to their relative, respective populations. In the Congress of States, which is provided for by the Constitution to take charge of all Federal matters entrusted to its control, Delaware, to-day, with her little over *one hundred thousand* population, stands perfectly equal in *political* power to New York *with her nearly forty times that number!* Congress under our system means the same now it ever meant. It means the meeting or assemblage of the States composing the Union by their accredited Representatives in Grand Council. In this Grand

Council, or Congress of States, Delaware has as much political power as New York. It is true in one House of this Congress, her one member has but little showing against the thirty odd members of New York. But her *equality of power* is maintained in the other. Here this perfect equality of political power between all the States is as distinctly retained under the second Articles of Union as it was under the first. No law can be passed by the Congress, if a majority of the States, through their "Ambassadors" in the Senate, object.

It is on this principle, that the six New England States with a fraction over three millions of population, under the census of 1860, have in the *last resort* in the Council Chambers of the Congress, *six times* as much power in determining all questions before them, as the State of New York, though New York alone has a population of over *half a million* more than all these other States together! It is upon this principle that these six States have as much power in the administration of the Government as the six States of New York, Pennsylvania, Virginia, Ohio, Indiana, and Illinois had with their aggregate population of *thirteen and a half millions in* 1860!

These are facts which neither Mr. Greeley nor anybody else can successfully controvert.

Ours, therefore, being a Federal Government, is and must be, as all other Federal Governments are, "a Government of States, and for States," with limited powers directed to specific objects; and not a Government *in any sense or view* for the masses of the people of the respective States in their *internal* and municipal affairs. This great *Sovereign* Power of Local Self-Government, for which Independence was declared and achieved, resides with the people of the respective States.

A ready and sufficient answer to Mr. Greeley's distorted "conception" about the political power of the comparative populations of Delaware and New York, may be given to him from his own doctrines. It is this: If a majority of the people of Delaware, after *due deliberation* and full consideration, have the same right, whether by virtue of State Sovereignty or Popular Sovereignty, to withdraw from the Union which they had to declare their Independence of Great Britain, *which he admits*

they have, it does not therefore follow that less than half the population of the State of New York can, *with equal right*, carry that State out, *against the will of the majority*, though the *minority* in New York wishing to do so be *five hundred* or *five thousand times* greater in number than the *majority* in Delaware! He may, therefore, not be alarmed at any of the legitimate consequences of his own doctrines!

What he says about Secession having been carried in the Southern States by "a violent, subversive, bullying, terrorizing, minority, overawing and stifling" a majority of the people of these States, is nothing but bald and naked assertion, which cannot be maintained against the facts of history. The question was as thoroughly discussed as any ever was before the people. Conventions were regularly called by the duly constituted authorities of the States, and members duly elected thereto, according to law in all the States, which seceded before Mr. Lincoln's Proclamation of War. These elections were as orderly as elections usually are in any of the States on great occasions. In these Conventions, Ordinances of Secession were passed by decided majorities! It is true that a large minority in all these Conventions, save one, and in all these States, were opposed to Secession as a question of policy; very few in any of them questioned the Right, or doubted their Duty to go with the majority. But after Mr. Lincoln's Proclamation of War — after his illegal and unconstitutional call for troops — after his suspension of the Writ of *Habeas Corpus*, *no people on earth were ever more unanimous* in any cause than were the people of the Southern States, in defence of what they deemed the great essential principles of American Free Institutions! There was not one in ten thousand of the people, in at least ten of the Southern States, whose heart and soul were not thoroughly enlisted in the cause! Nor did any people on earth ever make greater or more heroic sacrifices for its success, during four long years of devastation, blood, and carnage!

A majority of the people overawed and terrorized by a minority! *Indeed!*

If so, what became of this majority when the Confederate Armies, which stood between them and their deliverers, were

overpowered? Where is this majority now, even with the sweeping disfranchisement which silences so many of the overawing tyrants? Why has *it* not been permitted to exercise the *inalienable* Right of Self-Government, even with the reïnforcement of the enfranchised blacks? Why are so many of these States, till this day, held under military rule, with their whole populations "pinned" to *very bad Government* by Federal bayonets, under the *pretext* of their *continued "disloyalty?"* This assertion, as to the state of things in the beginning, is as utterly groundless in fact, as it is utterly inconsistent with the gratuitous assumptions on which the present *pretext* is based!

Is it not amazing, Messrs. Editors, that Mr. Greeley in the face of the facts for the last four years, to say nothing of those of the war, when, according to his own showing, the Administration at Washington in *rushing* into it, were in "the wrong"—I say, to omit all mention of the *wrongs* of the war, its immense sacrifices of blood and treasure, is it not amazing in the highest degree, that Mr. Greeley, in the face of the facts of the last four years only, should now repeat to us the Principles of American Independence as his creed? Have not the Constitutions of ten States, as made and adopted by the people thereof, "founded on such principles and organized in such form as seemed to them most likely to effect their safety and happiness," been swept from existence by military edict? Have not the people in these ten States, including the arbitrarily enfranchised *blacks*, been denied the right to form new Constitutions, laying their foundations on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness? Have they not been *required*, and literally *compelled*, to form such Constitutions as seemed most likely to effect the safety and security of the dominant faction at Washington?

Is this holding up to our gaze these immutable and ever-to-be-reverenced Principles of the Declaration of Independence, at *this* time and under *the present* circumstances, intended only as *mockery* added to insult, injury, and outrage?

Yours, most respectfully,

ALEXANDER H. STEPHENS.

ARTICLE V.

THE SUBJECT OF THE ELECTION OF MR. DAVIS TO THE PRESIDENCY OF THE CONFEDERATE STATES.

I.—Letter of Hon. Alexander M. Clayton, of Mississippi, criticising Mr. Stephens' Statement concerning it.

Wood Cote, Miss., *June* 17, 1870.

Editors Appeal:—The weekly Louisville *Courier-Journal*, of the 17th inst., contains an extract from the second volume of Mr. Stephens' History of the War, which calls for some comment. The passage alluded to is in these words:

"Toombs was to have been chosen President, but failed through a singular misapprehension on the part of representatives from other States, who had understood that he had refused to have his name put forward. There was some misunderstanding, likewise, concerning Howell Cobb being the choice of Georgia. By accidental complications, Mississippi had the first choice, and chose Jefferson Davis, leaving Georgia the second, which resulted in the Vice-Presidency of Mr. Stephens."

There is great error in this statement, unintentional no doubt, and induced to some extent by the modesty of Mr. Stephens, which makes him unwilling to give that prominence to himself, which really belongs to him.

I was at that time a member of the Provisional Congress from Mississippi. Believing that Mr. Davis was the choice of the South for the position of President, before repairing to Montgomery, I addressed him a letter to ascertain if he would accept it. He replied that it was not the place he desired; that if he could have his choice, he would greatly prefer to be in active service as Commander-in-chief of the Army; but that he

would give himself to the cause in any capacity whatever. That was the only letter of which I have any knowledge, that he wrote on the subject, and that was shown only to a very few persons, and only when I was asked if Mr. Davis would accept the Presidency.

I intend no injustice or disrespect to any of the gentlemen named, but I am sure Mr. Stephens was himself the first choice of Georgia. There was no electioneering, no management on the part of any one, each voter was left to determine for himself in whose hands the destinies of the infant Confederacy should be placed. By a law as fixed as gravitation itself, and as little disturbed by outside influences, the minds of members centered upon Mr. Davis.

After a few days of anxious and intense labor, the Provisional Constitution was framed and it became necessary to give it vitality by putting some one at head of the new Government. Then Mr. Crawford, of Georgia, approached me and said that it had been the wish of that State to make Mr. Stephens President; but he (Crawford) had become satisfied that it was the wish of all the other States, that Mr. Davis should be assigned to that position. He then asked me if Mr. Stephens would be acceptable to the Mississippi delegation as Vice-President. I replied, that I believed he would be their choice. Without any effort on the part of the friends of either, the election was made without the slightest dissent. Of the *accidental complications* referred to, I have not the least knowledge; and always thought that the election of Mr. Davis arose from the spontaneous conviction of his peculiar fitness. I have consulted no one on the subject, and have appended my name, only to avoid resting an important fact upon anonymous authority.

Very respectfully, yours,

ALEX. M. CLAYTON.

II.—Reply of Mr. Stephens, with his Statement upon the Subject.

Liberty Hall,
Crawfordville, Ga., *June* 25, 1870.

To the Editors of the Memphis Appeal:

Gentlemen:—I have just seen a copy of your paper of the 21st, in which is published a letter from Hon. Alexander M. Clayton, of Mississippi, that is very properly entitled to some notice from me.

In this letter Judge Clayton quotes from the Louisville *Courier Journal* what purports, as he quotes it, to be an "*extract*" from the second volume of my work upon the war upon the subject of the election of Mr. Davis to the Presidency of the Southern Confederacy, and after giving the "*extract*" proceeds to say: "There is great error in this statement, unintentional no doubt," etc.

Now I have not seen a copy of the issue of the *Courier-Journal* to which he refers; but I wish to say to you, and to your readers, as I have written to Judge Clayton, that there are no such words used by me in the book alluded to, as those said to be an "*extract*" from it. All who wish to know exactly what I said upon this subject, as well as all others treated of, had better consult the book itself than rely upon any other source for correct information in regard to it.

What is said in the second volume of my work upon the war upon the points referred to by Judge Clayton, I herewith append, that you may give it entire to your readers, if you think it of sufficient public interest to do so. I think if Judge Clayton had seen this, he would not written his letter.

Yours, respectfully,
Alexander H. Stephens.

[extract from book appended.]

"Major Heister—'Pray tell us, Mr. Stephens, if you have no objection, how this came about—how Mr. Davis came to be chosen President, and you Vice-President, under these circumstances.'

"Mr. STEPHENS — 'I have no objection to giving you my opinion on this subject, as to how Mr. Davis came to be chosen under the circumstances. It is, however, only an opinion. I was somewhat surprised myself at both results as they occurred; but as I took only a very small part in the elections any way, I can speak of my own knowledge as to but few facts connected with either. The conclusion that I came to from all facts I learned from others, before and afterwards, was that the selection of Mr. Davis grew out of a misapprehension on the part of some of the delegates of one, or, perhaps two or three of the States, in their consultations of the night before, as to the man that the Georgia delegation had determined to present. A majority of the States, as I understood, and afterwards learned, were looking to Georgia for the President.'

"Major HEISTER — 'Who was the man Georgia had determined to present?'

"Mr. STEPHENS — 'Georgia, at the time, had not acted in the matter. Her delegation did not hold their consultation until next morning. Mr. Toombs was the man whom they then unanimously agreed to present; at least there was perfect unanimity on the subject with all the delegates in attendance. Two, Mr. Hill and Mr. Wright, were absent. I now speak of my own knowledge. I was at this meeting of the Georgia delegation, and therein was acted the only part I took in the matter. That was by making the motion for Mr. Toombs' nomination to the Convention, supposing that it would be unanimously acceptable to that body; but in this meeting it was stated, after my motion was made, that two or three of the States, in their consultations, which had been held the night before, had determined to present the name of Mr. Davis. The fact only, without any reason for it, was stated, also, only as something which had been heard, but not positively known. On this announcement, a committee of our delegation, of which Mr. Crawford was chairman, or perhaps he alone, (I am not certain whether any, or how many more were united with him,) was appointed to ascertain if what had been heard in relation to the action of the other States referred to was true; and if it was, it was understood, at the instance of Mr. Toombs, that his name was not to be presented by Georgia, and that our delegation would vote for Mr. Davis, and have no contest on the subject.

"'In this meeting of our delegation, after the announcement alluded to had been made, and the course in reference to it had been resolved upon, Mr. Kenan moved, that in case what had been stated as rumor should be found true, and the name of Mr. Toombs should not be presented for the first office, then mine should be for the second. This motion was cordially seconded by Mr. Nisbet, and was unanimously agreed to, after a distinct understanding arrived at, by what I said in reference to it; which was, that in no event was my name to be presented, unless it was first ascertained positively, that Mr. Davis' name was to go before the Convention,

and not that of Mr. Toombs; and further, that my name would be unanimously acceptable to the States and their respective delegations. These points the committee of our delegation was instructed speedily to inquire into and report.'"

III.—Letter of Hon. Martin J. Crawford upon the same Subject.

[from the sun and times.]

Columbus, Ga., *June* 25, 1870.

Messrs. Editors: — I see a communication this morning in your paper from Hon. A. M. Clayton, of Mississippi, in reference to the election of the President of the Confederate States, in which the following paragraph occurs:

"After a few days of anxious and intense labor, the Provisional Constitution was framed, and it became necessary to give it vitality by putting some one at the head of the Government. Then Mr. Crawford, of Georgia, approached me and said that it had been the wish of that State to make Mr. Stephens President; but he (Crawford) had become satisfied that it was the wish of all the other States that Mr. Davis should be assigned to that position. He then asked me if Mr. Stephens would be acceptable to the Mississippi delegation as Vice-President. I replied, that I believed he would be their choice. Without any effort on the part of the friends of either the election was made without the slightest dissent. Of the *accidental complications* referred to, I have not the least knowledge; and always thought the election of Mr. Davis arose from spontaneous conviction of his peculiar fitness. I have consulted no one on the subject, and have appended my name, only to avoid resting an important fact upon anonymous authority."

The mistake into which Mr. Clayton falls is that I should have said to him that Georgia *had* desired Mr. Stephens as President. On the contrary, Georgia desired Mr. Toombs; and the delegation in conference upon the subject on the morning of the election had so declared; and if, upon inquiry, South Carolina and Florida had not determined to cast their votes for Mr. Davis, then Mr. Toombs' name was to be brought forward. To ascertain how this matter stood was made my duty by the delegation, and with positive instructions from Mr. Toombs

that his name was not to be presented if those States had declared for Mr. Davis in their separate meetings. This they had done, and that made it necessary to act upon the subject-matter of the Vice-Presidency as agreed upon in our meeting of the Georgia Delegates; which was, that in the event Mr. Toombs' name was not presented for the first place, Mr. Stephens' should be for the second; and I had been also requested to see whether that would be acceptable to the other States, hence my interview with Mr. Clayton. I intended to say to him, and had always supposed that he so understood me, that our State intended to present a name for the Presidency; but the action already taken by some of the States would prevent that, and I had called to see him for the purpose of ascertaining whether or not Mr. Stephens would be an acceptable man to his delegation for Vice-President.

Mr. Stephens never entertained an idea of the Presidency; and, indeed, thought that it would not be proper for him to have it. This I know, because while the subject was being considered, some members of the Congress mentioned the matter to him, and he very promptly said that his name could not be used in that way. After these gentlemen left our lodgings he said to me, in his usual frank manner, that he had not been a leader in the movement which was about to result in the establishment of a new Government, and that "to make him President would be like taking a child out of the hands of its mother and giving it to a stepmother to raise." "But," continued he, "some one who has been identified with the cause should be chosen, and whosoever he may be, he shall have the benefit of whatsoever experience and ability I can bring to his support. We are entering upon new and untried fields, and I greatly fear that our people are not prepared for the great responsibilities which are ahead of them. But Georgia, whose sovereign will I am bound to obey, has taken her course, and that assigns me to my position, and in that, I will discharge to her my duty honestly and faithfully; and if at last we shall lose all, I do not care to survive the liberties of my country."

I give in substance, if not in words, the language of this great and good man in the hours of our repose from the great

duties then devolving upon us, and which neither he nor I ever expected to be brought before the public eye.

A dark day, about the 20th of February, 1862, came over us, and there was an interview and a solemn parting between Mr. Stephens and myself which I have never put upon paper; but which I do not intend to leave unknown to the world, which shows that he is as patriotic and true to his country as were the bravest and best of the Spartans to theirs:

Touching the Presidency of the Confederate States, I have this to say: That for more than ten years, I had looked for the separation of the States, and the disconnection of the Southern from the Northern States of the American Union. I had acted for seven sessions of the Congress of the United States with the extreme wing of the States' Rights men, and am free to say that at Washington, during that time, Mr. Davis was looked upon as the representative man, or at least as the man more identified with our view of States' Rights and Southern Rights than any other, and therefore was looked to as the man who should be chosen the first President of the Confederate States, or our new Government, under whatever name it might be organized. But the Provisional Congress was composed, to a large extent, of gentlemen who were not in the old Congress; yet many of whom were men of experience, education, public service and substance. Our first duty was to frame a constitution. Mr. Toombs, who had been for nearly twenty years in the American Congress, and for ten of them in the Senate — in the prime of his manhood and in the fulness of his intellectual vigor — was a member of the body. He had never looked to the Presidency of the new Republic, either at Washington or Montgomery, but in framing of the Constitution and the organization of the Confederate Government, he showed himself to be one so wonderfully endowed with the very knowledge at that time mostly needed, that a manifestation in his favor was made by the delegates from several States to put him at the head of the government. He, by persons unacquainted with him, is looked upon and considered as rash and impetuous. In conversation this is so, but when anything is *to be done*, it is not so. Notwithstanding all he may say in the highway, he is

the wisest and safest man *in counsel* whom it has been my fortune to meet.

It was this wisdom, knowledge and discretion which directed attention to him at that time for the Presidency, and with the vote of South Carolina or Florida, as I understood, he would have been unanimously chosen as President; for it was well agreed and understood that there should be but one name presented for each place, and whosoever should command four States out of the six would receive the whole. I think that Mr. Davis was elected because he had been long identified with the theories which were then triumphant; because of his supposed influence with the officers of the old army, as well as the fact than Messrs. Toombs, Cobb and Stephens were all from the same State, and the political waters were too shallow for them to turn in without injury to each other.

Very respectfully,

MARTIN J. CRAWFORD.

ARTICLE VI.

CONFEDERATE INACTIVITY AFTER THE FIRST BATTLE OF MANASSAS, 1861.—*CRITICISM OF HON. E. BARKSDALE OF MISSISSIPPI ON THIS POINT.*

I.—EDITORIAL OF THE AUGUSTA (GA.) "CONSTITUTIONALIST," 31ST JULY, 1870, BY J. R. RANDALL: WITH LETTERS FROM PRESIDENT DAVIS AND GENERAL JOSEPH E. JOHNSTON.

The Truth of History.—Mr. Stephens and Mr. Barksdale.

SEVERAL weeks ago, Hon. E. Barksdale, editor of the Jackson (Miss.) *Clarion*, joined issue with Hon. Alexander H. Stephens in his statement in the second volume of the "*War Between the States*," on the much mooted question of the inactivity of the Confederate army at Manassas during the whole Fall of 1861, after the great victory of the 21st of July. This article (which it now seems was not founded upon a perusal of the exact language of Mr. Stephens upon the subject, but upon a "sketch" which we gave of the substance, as we understood it, of several parts of the book) maintained that Mr. Stephens had committed "a grave error, scarcely excusable in one occupying his position and who has undertaken to write for posterity." To show this error, Mr. Barksdale published, for the first time, a correspondence between President Davis and General Joseph E. Johnston upon the subject. That correspondence, as a part of the history of the times, we give to our readers. It is as follows:

RICHMOND, VA., *November* 3, 1861.

General J. E. Johnston, Commanding Department of the Potomac:

SIR: Reports have been and are being widely circulated, to the effect that I prevented General Beauregard from pursuing the enemy after the battle of Manassas, and had subsequently restrained him from advancing upon Washington City. Though such statements may have been made merely for my injury, and in that view their notice might be postponed to

a more convenient season, they have acquired importance from the fact that they have served to create distrust, to excite disappointment, and must embarrass the administration in its further efforts to reïnforce the armies of the Potomac, and generally to provide for the public defence.

For these public considerations, I call upon you, as the Commanding-General, and as a party to all the conferences held by me on the 21st and 22d of July, to say whether I obstructed the pursuit of the enemy after the victory at Manassas, or have ever objected to an advance or other active operation which it was feasible for the army to undertake?

Very respectfully, yours, etc.,

JEFFERSON DAVIS.

HEADQUARTERS, CENTREVILLE, *November* 10, 1861.

To His Excellency the President:

SIR: I have had the honor to receive your letter of the 3d inst., in which you call upon me, "as the Commanding-General, and as a party to all the conferences held by you on the 21st and 22d of July, to say:

"Whether you obstructed the pursuit after the victory of Manassas.

"Or have ever objected to an advance or other active operations which it was feasible for the army to undertake."

To the first question I reply *No.* The pursuit was "obstructed" by the enemy's troops at Centreville, as I have stated in my official report. In that report I have also said why no advance was made upon the enemy's capital for reasons as follows:

The apparent freshness of the United States troops at Centreville, which checked our pursuit; the strong force occupying the works near Georgetown, Arlington, and Alexandria; the certainty, too, that General Patterson, if needed, would reach Washington with his army of more than 30,000 sooner than we could; and the condition and inadequate means of the army in ammunition, provisions, and transportation, prevented any serious thoughts of advancing against the capital.

To the second question I reply that *it has never been feasible for the army to advance further than it has done*—to the line of Fairfax C. H., with its advanced post at Upton's, Munson's and Mason's Hill. After a conference at Fairfax C. H., with the three senior general officers, you announced it to be impracticable to give this army the strength which those officers considered necessary to enable it to assume the offensive. Upon which I drew it back to its present position.

Most respectfully, your ob't serv't

J. E. JOHNSTON.

A true copy:

G. W. C. LEE, Colonel and A. D. C.

To the President.

We took no notice of this at the time, because we saw no *new light* thrown upon the subject by this correspondence, though it was never before published.

In the Memphis *Appeal*, of the 25th instant, we see a letter from Mr. Stephens to Mr. Barksdale on the subject of his editorial in the *Clarion*, and Mr. Barksdale's reply, as well as *another exceedingly interesting paper*, which, as far as we are aware, has never before been made public. This paper and the correspondence between Mr. Stephens and Mr. Barksdale we give as we find them in the *Appeal*—feeling assured that they will be perused with no ordinary interest.

II. Letters Referred to by Mr. Randall:

Liberty Hall,
Crawfordville, Ga., *July* 6, 1870.

Hon. E. Barksdale:

Dear Sir:—In the *Clarion* I see an editorial headed "The Battle of Manassas, &c.," which requires a notice from me.

You will pardon me, I trust, for saying that I feel quite sure if you had seen what is stated in the 2d volume of my book upon the war, now being issued from the press, you would not have expressed yourself as you did in this article; and that you may know exactly what my statement in the book is, upon the subject of the advance of the Confederate army, after the battle of Manassas, I send you an accurate *extract* from it (pages 488–489,) as follows:

"Major Heister—'One thing, Mr. Stephens, I should like to know just at this point; and that is, why Gens. Johnston and Beauregard remained entirely inactive at Manassas during the whole Fall after the rout of Gen. McDowell's army on the 21st July? Why did they not push on to Washington? They must have had a very large force early in the Fall, and flushed with victory as they were, it has always been a mystery to me why they stood so perfectly quiet until McClellan's new army was organized almost within their sight? Can you explain this?'

"Mr. Stephens—'I do not know that I can. With the military operations, as I have said before, it is not my purpose to deal, except in so far as they bear upon the questions which we have directly in hand. A great

deal has been said and written upon the subject of your enquiry. It has been said that Thomas J. Jackson, who afterwards became so famous under the appellation of 'Stonewall,' and who was the Colonel of that name so favorably mentioned in General Johnston's report of the battle of the 21st of July, was urgent for an immediate pressing forward to Washington. Some think his views were right. My own opinion, from the reports of both General Johnston and General Beauregard, as well as from other sources, is, that such a movement at that time, was altogether impracticable. As to the state of things afterwards, that is a different question. All I know upon that point is, that General Johnston did wish to make some movement of the sort in the early part of the Fall, when he was better prepared. Not, however, with the forces he then had, for they did not exceed forty thousand effective men, while McClellan had over fifty thousand when he took command at Washington on the 27th of July. Johnston's plan was to concentrate, as quickly as possible, at that place, a force sufficient for this purpose, which could be done only by leaving bare remote points, then defended. For this object a council of war was held at Manassas. Mr. Davis went up from Richmond. He met Generals Johnston, Beauregard, and Gustavus W. Smith in this council. General Beauregard had been promoted to the rank of full General, for his gallantry, and great services on the 21st of July. General Smith, at the time, commanded a division of this army, with the rank of Major-General. He was a graduate of West Point, and recognized as an officer of great merit.

"'The result of the council of war so held was the disapproval, by Mr. Davis, of the policy suggested. Upon the merits of the views presented for or against its adoption, I have no speculative opinions to express. Of course all that could now be said on the subject would amount to nothing but speculations. General Beauregard was, not very long afterwards, transferred to a command in the West. This is all the explanation I can give of the matter you inquire about.'"

The foregoing extract (which contains all that is said in the book on the subject of your special comments in the article referred to) I have had made, and verified from the work itself, and send it to you, with a request that you will present it, with this letter, to your readers. I deeply regret that I have not a spare copy of the volume to send you, that you may have the entire work before you in making any future comments upon this or any other part of it. In combatting any statement or position of mine, when *truth* is the object, it is essential to refer to the *text itself*, and not to the *commentaries* of others upon it.

In this instance I think you will readily admit, there is no error in the statement as it stands in the book. There is cer-

tainly not the slightest inconsistency, or discrepancy between it and any fact brought to light by the correspondence you published, for the first time, between President Davis and General Joseph E. Johnston. The facts in this instance, as in all others, as I understand them, are exactly as I have stated them; and so I think you will find them to be upon close examination and full investigation.

Of one thing you may rest assured, the great object with me throughout the work was the vindication of the *truth* of history; and if it be shown that I have fallen into error upon any point, however small or minor, it will be most cheerfully corrected in all subsequent editions.

Yours, most respectfully,

ALEXANDER H. STEPHENS.

[REPLY.]

JACKSON, *July* 16, 1870.

Hon. A. H. STEPHENS:

DEAR SIR:—I have cheerfully complied with your request, to publish your letter, and also the extract enclosed, from your forthcoming (2d) volume.

Finding in a newspaper published in your State what purported to be a sketch authorized by you, of your work, on the subject alluded to, I reasonably inferred that you had been correctly reported. And as the newspapers and the public generally were receiving, as an unchallenged truth, the statement thus apparently endorsed, that President Davis prevented the General in command of the Confederate forces from pursuing the enemy from the field of Manassas to Washington City, I deemed the occasion proper to produce the unpublished correspondence between President Davis and General J. E. Johnston, forever putting the statement at rest. A similar charge had been made in the Confederate Congress (in secret session), and the correspondence was then employed to disprove it.

You will thus see that the responsibility of creating an apparent issue, in order to "vindicate the truth of history," did not rest with me. I have no taste for controversy on the subject, and acted solely from a sense of duty to correct, with the

means in my possession, an injustice (which I did not suppose to be intentional) to Mr. Davis, who, during the war, was silent under misrepresentation and unmerited reproach; and who, by the approbation of his friends, has maintained a strict silence since its close; but whose fame, nevertheless, is the property of his countrymen, and is especially dear to the people of his own State.

It is evident from the extract which you have enclosed, that you were misreported by the Augusta *Constitutionalist*, but I regret to find that the issue is changed, from the statement that President Davis prevented the Confederate troops from following the enemy directly into Washington City from the battle-field, to a statement that three months thereafter, the fruits of the victory, which had then passed into history, were not reaped by the Generals in consequence of his disapproval.

Candor compels me respectfully to dissent from your opinion that there is "no error, in the statement as it stands in the book, nor discrepancy between it and the facts brought to light by the correspondence." Your language conveys a meaning widely variant from the statement of General Johnston. The extract produces the impression that the President disapproved the policy of activity and an advance movement, when in truth he favored such plan; and it was not carried out because of his inability to furnish the troops declared to be essential by the Generals entrusted with command. In reply to his inquiry, whether he had prevented the troops from following up the rout at Manassas, General Johnston answered, "*No.*" And in reply to his inquiry whether "he had *ever* objected to an advance, or other active operations which it was feasible for the army to undertake," General Johnston replied: "*It has never been feasible for the Army to advance further than it has done.* After a conference at Fairfax C. H., with the three senior Generals, you announced it to be impracticable to give the army the strength necessary to assume the offensive." This letter was dated the 21st of November of the Fall in the "early part" of which you report that President Davis overruled their purpose to advance on Washington. It does not authorize the statement, or warrant the inference, that they even advised an

advance movement; much less does it show that the President objected to the assuming of offensive operations. It only appears that he was unable to furnish the troops thought by the senior Generals to be necessary for a movement, if made against their main force; because he was well aware that to have left bare Yorktown and Norfolk, (which were not "remote points," whether their proximity to the scene of active operations or their relations to the vital parts of the Confederacy be considered), would have opened the way for the ascent of the enemy up James River to take the Capital, and cut off the army of the Potomac from all supplies, by the destruction of railroads. This could have been done by a small force; and still small forces would have achieved a like destructive work at Charleston and other important points.

And while this discrepancy is shown to exist between the extract from your work and the facts revealed by the correspon dence, you will allow me further to say, that the statement is faulty, not only in its erroneous representation of the plan of campaign of at least one of the parties whose names are introduced, but in its failure to mention that while he (President Davis) did not have the troops that were required for a direct attack on Washington, three months after the panic of McDowell's army had died out, and when the enemy, warned by the terrible lesson at Manassas, had prepared themselves to resist such a movement, he did advise an advance into lower Maryland for the protection of the people of that section from the outrages to which they were subjected by troops under the command of General Sickles. The expedition was deemed feasible by the Generals; but was never undertaken for reasons of which the public are not advised, but which may have been entirely sufficient. It is not my province to pronounce an opinion. Certainly nothing could have more surprised President Davis, and the persons who were acquainted with the views which he had communicated to the officers in command, than the attempt to hold him responsible either for the failure to pursue the enemy at Manassas, or the inactivity which continued until the retreat of the army to the defences at Richmond. And it is worthy of remark, that the allegation of dis-

approving active operations was never made against President Davis, after General Lee (with whose plans he entirely concurred) took command.

I am, very respectfully, yours,

E. Barksdale.

III.—The Interesting Paper referred to by Mr. Randall.

Memorandum of Council of War signed by Generals G. W. Smith, G. T. Beauregard, and J. E. Johnston.

[A copy.]

On the 26th of September, 1861, General Joseph E. Johnston addressed a letter to the Secretary of War in regard to the importance of putting this army in condition to assume the offensive, and suggested that his Excellency the President, or the Secretary of War, or some one representing them, should, at an early day, come to the headquarters of the army at or near Fairfax Court House, for the purpose of deciding whether the army could be reinforced to the extent that the commanding General deemed necessary for an offensive campaign.

His Excellency the President arrived at Fairfax Court House a few days thereafter, late in the afternoon, and proceeded to the quarters of General Beauregard. On the same evening General Johnston and I called to pay our respects. No official subjects of importance were alluded to in that interview. At eight o'clock the next evening, by appointment of the President, a conference was had between himself, General Johnston, General Beauregard and myself. Various matters of detail were introduced by the President, and talked over between himself and the two senior Generals.

Having but recently arrived, and not being well acquainted with the special subjects referred to, I took little or no part in this conversation. Finally, with perhaps some abruptness, I said: "Mr. President, is it not possible to put this army in condition to assume the active offensive?" adding that this was a

question of vital importance, upon which the success or failure of our cause might depend.

This question brought on discussion.

The precise conversation which followed I do not propose to give. It was an argument. There seemed to be little difference of opinion between us in regard to general views and principles. It was clearly stated and agreed to, that the military force of the Confederate States was at the highest point it could attain without arms from abroad; that the portion of this particular army present for duty was in the finest fighting condition; that if kept inactive it must retrograde immensely in every respect during the Winter, the effect of which was foreseen and dreaded by us all.

The enemy was daily increasing. We looked forward to a sad state of things at the opening of a Spring campaign.

These and other points being agreed upon without argument, it was again asked: "Mr. President, is it not possible to increase the effective strength of this army, and put us in a condition to cross the Potomac and carry the war into the enemy's country? Can you not, by stripping other points to the least they will bear, and even risking defeat at all other places, put us in condition to move forward? Success here gains all." In explanation, and as an illustration of this, the unqualified opinion was advanced that if for want of adequate strength on our part in Kentucky the Federal forces should take military possession of that whole State, and even enter and occupy a portion of Tennessee, a victory gained by the army beyond the Potomac would, by threatening the heart of the Northern States, compel their armies to fall back, free Kentucky, and give us the line of the Ohio within ten days thereafter. On the other hand, should our forces in Tennessee and Southern Kentucky be strengthened so as to enable us to take and to hold the Ohio River as a boundary, a disastrous defeat of this army would at once be followed by an overwhelming wave of Northern invaders, that would sweep over Kentucky and Tennessee, extending to the northern part of the cotton States, if not to New Orleans. Similar views were expressed in regard to ultimate results in Northwestern Virginia being dependent

upon the success or failure of this; and various other illustrations were offered, showing that success here was success everywhere; defeat here, defeat everywhere; and that this was the point upon which all the available forces of the Confederate States should be concentrated.

It seemed to be conceded by all that our force, at this time here, was not sufficient for assuming the offensive beyond the Potomac; and that even with a much larger force, an attack upon their army, under the guns of their fortifications on this side of the river, was out of the question. The President asked me what number of men was necessary, in my opinion, to warrant an offensive campaign—to cross the Potomac, cut off the communications of the enemy with their fortified capital, and carry the war into their own country. I answered fifty thousand seasoned soldiers—explaining that by "seasoned soldiers" I meant such men as we had here present for duty; and added that they would have to be drawn from the Peninsula about Yorktown, Norfolk, from Western Virginia, Pensacola, or wherever might be most expedient. Generals Johnston and Beauregard both said that a force of sixty thousand such men would be necessary; and that this force would require large and additional transportation and munitions of war, the supplies here being entirely inadequate for an active campaign in the enemy's country, even with our present force. In this connection there was some discussion of the difficulties to be overcome, and the probabilities of success; but no one questioned the disastrous results of remaining inactive throughout the Winter. Notwithstanding the belief that many in the Northern army were opposed on principle to invading the Southern States, and that they would fight better in their own homes than in attacking ours, it was believed that the best, if not the only plan to insure success, was to concentrate our forces and attack the enemy in their own country. The President, I think, gave no definite opinion in regard to the number of men necessary for that purpose; and I am sure that no one present considered this a question to be finally decided by any other person than the Commanding-General of this army. Returning to the question that had been twice asked, the President expressed surprise and regret that

the number of surplus arms here was so small, and, I thought, spoke bitterly of this disappointment. He then stated that at that time no reinforcements could be furnished to this army of the character asked for, and that the most that could be done would be to furnish recruits to take the surplus arms in store here (say 2,500 stand); that the whole country was demanding protection at his hands, and praying for arms and troops for defence. He had long been expecting arms from abroad, but he had been disappointed. He still hoped to get them; but he had no positive assurance that they would be received at all. The manufacture of arms in the Confederate States was as yet undeveloped to any considerable extent. Want of arms was the great difficulty. He could not take any troops from the points named, and without arms from abroad could not reinforce this army. He expressed regret, and seemed to feel deeply, as did every one present.

When the President had thus clearly and positively stated his inability to put this army in the condition deemed by the Generals necessary before entering upon an active offensive campaign, it was felt that it might be better to run the risk of almost certain destruction, fighting upon the other side of the Potomac, rather than see the gradual dying out and deterioration of this army during a Winter, at the end of which the term of enlistment of half the force would expire. The prospect of the Spring campaign to be commenced under such discouraging circumstances was rendered all the more gloomy by the daily increasing strength of an enemy already much superior in numbers. On the other hand was the hope and expectation that before the end of Winter arms would be introduced into the country, and all were confident that we could then not only protect our own country, but successfully invade that of the enemy. General Johnston said that he did not feel at liberty to express an opinion as to the practicability of reducing the strength of our force at points not within the limits of his command; and with but few further remarks from any one, the answer of the President was accepted as final, and it was felt that there was no other course left but to take a defensive position and await the enemy.

If they did not advance we had but to await the Winter and its results.

After the main question was dropped the President proposed, instead of an active, offensive campaign, we should attempt certain partial operations. A sudden blow against Sickles and Banks, or to break the bridge over the Monocacy. This, he thought, besides injuring the enemy, would exert a good influence over our troops, and encourage the people of the Confederate States generally.

In regard to attacking Sickles, it was stated in reply that, as the enemy controlled the river with his ships of war, it would be necessary for us to occupy two points on the river, one above and the other below our point of crossing, that we might by our batteries prevent their armed vessels from interfering with the passage of the troops. In any case, the difficulty of crossing large bodies over wide rivers in the vicinity of such an enemy and the re-crossing made such expeditions hazardous. It was agreed, however, that if any opportunity should occur offering reasonable chances of success, the attempt should be made.

During this conference or council, which lasted perhaps two hours, all was earnest, serious, deliberate. The impression made upon me was deep and lasting; and I am convinced that the foregoing statement is not only correct as far as it goes, but, in my opinion, it gives a fair idea of all that occurred at that time in regard to the question of our crossing the Potomac.

CENTREVILLE VA., *January* 31, 1862.

Signed in triplicate.

[Signed] G. W. SMITH,
Major-General.

My recollection of the above conference agrees fully with this statement of General G. W. Smith.

[Signed] G. T. BEAUREGARD,
General C. S. A.

[Signed] J. E. JOHNSTON,
General.

IV.—Conclusion of Mr. Randall's Editorial in which the Foregoing Letters and Paper had been incorporated.

In reply to Mr. Barksdale, so far as it concerns the "sketch" in the *Constitutionalist*, to which he refers in his letter to Mr. Stephens, we feel it incumbent on us, as a duty, to add, in conclusion, that he has fallen into two "grave errors" himself.

1st. The "sketch" in the *Constitutionalist*, to which he alludes, *did not* "purport" to be "*authorized by*" Mr. Stephens. There was no such indication or intimation in it from beginning to end. In point of fact, Mr. Stephens knew no more about it, or the design of the editor of this paper to give such a "sketch" of the book, until he saw it in print, than he did of the editorial of the *Clarion* in question.

2d. There is in that "sketch" or review of the book no such statement as "that President Davis *prevented the General in command of the Confederate forces from pursuing the enemy from the field of Manassas to Washington City.*"

It was to rebut this statement, Mr. Barksdale says, he procured for the first time the correspondence between President Davis and General Johnston. The correspondence does conclusively rebut that statement, if anybody ever made it. But Mr. Barksdale, added by the most powerful microscope, will fail to find it in the article of the *Constitutionalist* referred to. The language of that article, in giving briefly what we understood Mr. Stephens to say, in reply to the question touching the *inactivity* of the army during the Fall of 1861, was: "The responsibility for the failure to advance after the battle of Manassas is referred to President Davis." There is nothing in this about President Davis having "prevented the General in command of the Confederate forces from pursuing the enemy from the field of Manassas to Washington City." There was no allusion whatever to an *immediate* advance of the army. The allusion was to the general inactivity of that army, embraced in the question put to Mr. Stephens by Major Heister. On this point, we said the responsibility for the failure to advance is "*referred to President* Davis."

We did not understand Mr. Stephens as intending to cast any *censure* upon President Davis in the detail of facts as far as he knew them; and we certainly did not mean to cast any upon him in the *version* of the substance of those facts. Responsibility does not of itself imply censure. That depends entirely upon other considerations. Who would think that any one meant to cast censure upon Gen. Taylor for saying that the *responsibility* of fighting the battle of Buena Vista rested entirely upon him? We may have misconceived Mr. Stephens' idea. We have had no conference with him on this point, either before or since the publication of our "sketch" alluded to; but we submit to intelligent readers, with all the facts before them, whether he was "*misreported*" by us, as the *Clarion* says. With the full text of the work before us, we believe that Mr. Stephens means by what he says in it, that the *responsibility* of the *inactivity* of the army of Gen. Johnston, during the Fall of 1861, does rest upon Mr. Davis. But we do not understand him in so holding to mean to pronounce any judgment of *censure* against the President for exercising that *responsibility* in *disapproving* the plan of aggressive movements submitted to him by the Generals in the Council of War that was held, the account of which now, for the first time, has been given to the public.

Whether President Davis' views or those of his Generals were the wiser, under all the circumstances of the case, it is not our province or disposition at this time to pass judgment. But it does seem to us, in view of all the facts as thus far disclosed, that the *responsibility* of the course of events, in a military aspect, during the Fall of 1861, did rest upon him. This by no means, however, implies censure of itself. It may be that his views were founded upon a vast deal more of statesmanship and generalship than those of Johnston, Beauregard, and Smith. That, as Mr. Stephens says, "is a matter of speculation." His views, however, prevailed. He was the Commander-in-Chief, and we are surprised to see so devoted a friend to his reputation, as Mr. Barksdale is, so sensitive upon the simple statement of so palpable a fact.

We can assure Mr. Barksdale, in making these remarks,

that we entertain no unkind feelings toward him or Mr. Davis. Our sole object is to set him right so far as the *Constitutionalist* is concerned, and the "sketch" which was, as he says, the foundation on which he produced his first article in the *Clarion*.

V.—Mr. Stephens' Rejoinder to Mr. Barksdale's Reply to His First Letter.

Liberty Hall,
Crawfordville, Ga., *August* 6, 1870.

Hon. E. Barksdale:

Dear Sir:—A copy of your paper of the 22d ult., containing my letter to you of the 6th, about the events succeeding the first "Battle of Manassas," and your reply to it, of the 16th, etc., was received several days ago; but the press of other business, when I have been able to write at all, since then, has prevented me from responding to you sooner upon the subject.

You will allow me, I trust, a few words further to your readers, and the public generally, through the medium of the *Clarion*, by way of vindication. Not, however, for the purpose or in the spirit of controversy. Indeed, upon the leading and important facts, as they stand stated in the *extract* I sent you, it *does seem to me* that there can be no controversy between intelligent minds; and until you distinctly specify some error in that statement I have nothing more to say in reference to it. My object at this time is simply and briefly to call attention to some points in your reply which, if permitted to pass unnoticed by me, might lead many to form very erroneous conclusions in reference to the matters embraced in them.

In the first place, then, you will please allow me to remark that you were mistaken in saying, as you did in your reply to me, that the "sketch" of the 2d volume, of my work on the war, published in the Augusta *Constitutionalist*, to which you refer, "*purported*" to be "*authorized by me.*" When I saw your reply I thought it strange that any such feature about that article should have escaped my attention; for, in point of fact, I knew nothing about it until I saw it in print. I did not know

that the writer had any intention of preparing anything of the kind; and upon reference to it since, I see that you were mistaken in this particular — there is nothing about that article bearing any such "*purport.*"

In the second place, you will allow me to say, there is in that "sketch," or review, no such statement as "*that President Davis prevented the General in command of the Confederate forces from pursuing the enemy from the field of Manassas to Washington City,*" *etc.*

This is the *statement* so "*apparently endorsed*" by me which you say you deemed it proper to put at rest forever, by the publication of the correspondence between President Davis and General Johnston in your first article in the *Clarion.*

Now if that "*sketch*" had represented me as having made any such statement in the book *as that thus attributed to it* in your reply to me, I should have corrected the Editor, and set him right in this matter, as promptly as I did you upon seeing your first article in the *Clarion.* The correspondence you produced did most certainly show, that any statement such as that, by whomsoever made, if by anybody, was exceedingly erroneous. But you must remember that I made no such statement, nor did the Editor of the *Constitutionalist* in the article referred to.

In the third and last place, I wish now simply to add, that in the *extract* from the book, which you had before you, and which the public have, with your reply — in that part treating of the events subsequent to the first Battle of Manassas and President Davis in connection with them, there is no such statement or expression as "*that three months thereafter the fruits of the victory which had then passed into history were not reaped by the Generals in consequence of his disapproval.*"

This is the statement which you undertook to assail in your reply to me; but I have only to remind you and your readers that no such language as this is to be found in the *extract* or the book — none such was ever used by me on any occasion. I am responsible only for my own language, and my own words — their due and proper import I think I understand; and if you can point out a single error in the statement of facts as it stands in the *extract* and in the book, in my own language on

the subject, I shall be greatly obliged to you to do it — this you have certainly not yet done.

Yours most respectfully,

ALEXANDER H. STEPHENS.

VI.—MR. BARKSDALE'S SUR-REJOINDER.

JACKSON, *August*, 1870.

Hon. A. H. STEPHENS:

DEAR SIR:—I will publish your letter with pleasure, accompanying it with a brief reply. The main object of the correspondence so far as I am concerned, has been accomplished. The "truth of history has been vindicated." The heretofore unpublished correspondence between President Davis and General J. E. Johnston has removed from the public mind the erroneous impression that the failure of the Confederate Army to pursue the enemy after the battle of Manassas was due to the interference of the former; and the no less erroneous statement that he subsequently opposed a forward movement, and thus prevented the fruits of the victory from being reaped, has also been corrected. Since the appearance of my last letter on this subject, both the facts have been verified by the publication of an account of the Conference which was held in October, 1861, over the signature of Generals Smith, Johnston, and Beauregard. You will pardon me for expressing the hope that corrections, or explanations, corresponding to them, will appear in a revised edition of your second volume.

In conclusion, I will briefly notice the points contained in your last letter.

1. The inference that you authorized or sanctioned the publication of the original "sketch," was warranted by your having furnished its author with advance sheets of your work. It was copied by the whole press of the country, North and South, and accepted by the public as a true statement of the facts to which it related; and yet after weeks of circulation, it failed to receive your correction.

2. In writing that President Davis had been charged with

"preventing the General in command of the Confederate forces from pursuing the enemy from Manassas to Washington," I did not pretend to quote the exact language employed, but was commenting on a statement which you will admit has the same meaning precisely. The following is the extract from the sketch, which elicited the comment: "*The responsibility of the failure to advance after the battle is referred (attributed) to Mr. Davis.*"

3. True, the extract from your book does not say, in so many words, that President Davis "prevented the fruits of the victory from being reaped three months after it had passed into history by disapproving a forward movement." Having quoted your precise language, I could not have attributed any other words to you than those actually employed. *But I did mean to state that you had said in effect precisely the same thing as the following quotation from your book will show:*

"Such a movement (as an immediate pressing forward to Washington after the battle) was altogether impracticable. As to the state of things *afterwards, that is a different question.* All I know on that point is that Gen. Johnston did wish to *make some movement of the sort early in the fall* . . . . For this object a council of war was held. . . . The result of the council *was the disapproval by Mr. Davis of the plan proposed.*"

The battle was fought on the 21st of July. The council was held in the early part of October; and you must concur with me that Mr. Davis is represented to have "disapproved" a movement "to reap the fruits of the victory three months after it had passed into history."

If the sketch had not erroneously reported you to have stated that Mr. Davis was responsible "for the failure to advance after the battle of Manassas;" and if you had not really alleged that he had "disapproved" "of some movement of the sort" in the council of war held in October, there could have been no occasion for a correspondence, which I repeat has been conducted on my part in no spirit of controversy,

I am yours, very respectfully,

E. Barksdale.

VII.—Mr. Stephens' Letter in Rebuttal.

Liberty Hall,
Crawfordville, Ga., *August* 28, 1870.

Hon. E. Barksdale:

Dear Sir:—A copy of the *Clarion* of the 18th inst., containing my letter to you of the 6th inst., ("by way of *Rejoinder*" not of *vindication* as printed); and your comments about it, was received this morning.

This requires further notice from me, lest silence on my part may be construed into an admission of some matters which I am very far from making.

You will therefore please allow me to say to you, and to your readers, that I *do not admit* that the statement in the *Constitutionalist*, on which you had commented in your previous letter, "has the same meaning precisely" as the paraphrase of it by you. I do not admit that it had, in its whole connection, any such meaning whatever, as that conveyed by the words you used in giving its purport.

You will allow me also to say, that I do *not* "*concur with*" you in holding that "Mr. Davis is represented" by me in the 2nd vol. of my work upon the war, as having "disapproved" a movement, "to reap the fruits of the victory" (of the first battle of Manassas) "three months after it had passed into history."

You say in substance, that I *must concur with you* in holding that this is the purport of my statement in the book. Now I say to you, most respectfully and emphatically, that *I do not concur* in any such construction of the language used by me as that by which any such distorted meaning can be given to it; and I enter my protest against any such construction being put upon it.

The substance of what is said in the book as to my knowledge of the facts bearing upon the *inactivity* of the Confederate Army at Manassas during the Fall of 1861 — after the battle of the 21st July, you and your readers will recollect amounts to this:

The Confederate Army at that place was, in my opinion, in no condition to make an advance movement immediately after that battle; that Gen. Johnston did wish to make some movement of the sort in the early Fall after he was better prepared.

That his plan was to concentrate as quickly as possible at that place a force sufficient for that purpose, *which could be done only by leaving bare remote points then defended;* that for the consideration of that policy a Council of War was held at his headquarters; that Mr. Davis went up from Richmond, and met in this Council Generals Johnston, Beauregard, and Gustavus W. Smith; that the result of this Council of War was the *disapproval* of Mr. Davis of the policy proposed — that is, he disapproved of the proposition submitted for an advance movement, by concentrating at Manassas the required forces, which could be done *only by leaving bare remote places then defended.*

This is a brief but clear statement of the substance of all that is set forth in the book about the subject. In it there is nothing but the mention of facts only, so far as my knowledge extended.

On the merits or demerits of the policy suggested, I gave you no opinion whatever; on the contrary, I expressly abstained from giving any opinion. My object was simply to state the facts accurately as far as they had come to my knowledge, leaving all to form their own opinions from the facts stated.

Now the only real question between us — that which gave rise to this correspondence — is whether the *statement of facts as above set forth*, being substantially the same as that set forth in the book, be correct or not.

You will recollect that, in your first article on this subject in the *Clarion*, you maintained that I had in it committed an "error, scarcely excusable in one occupying my position, and who had undertaken to write for posterity." In my reply of the 6th of July last, I gave you the exact extract of the book in full upon the subject, and stated that "if it be shown that I had fallen into an error upon any point, however small a one, it would be most cheerfully corrected in all subsequent editions."

Without having pointed out any error in the statement, as it

stands in my own language in the book, in either of your subsequent letters to me, you nevertheless express a "hope" in the last of these letters received to-day, that "corrections and explanations will appear in a revised edition of the 2d volume" of my work, "corresponding" with the facts brought to light by the correspondence (which you published for the first time) between President Davis and General Joseph E. Johnston, and by the account of the Council of War or Conference near Manassas in the Fall of 1861, lately given to the public for the first time over the signatures of Generals Smith, Beauregard, and Johnston, and which, I may add, was most probably brought to light by this correspondence.

Now in reply to this, I ask you most seriously and earnestly, wherein is there the slightest discrepancy or derangement between any thing in either of these lately published papers, and the statement as it stands in the book? Do they not confirm it in every particular? If I had had the correspondence between President Davis and General Johnston, and the account of the conference referred to by you (recently published over the signatures of Generals Smith, Beauregard, and Johnston) before me when I was penning the statement of the facts as it stands in the book, could I have possibly made it more strictly conform to both these papers than it does?

Does not General Johnston, in his letter to President Davis, published by you, say, in substance, that the army at Manassas was not in a condition to make an advance movement immediately after the battle of the 21st of July, 1861? Is not this in strict accordance with what I said upon that subject?

Does not General Johnston also in his letter of the 10th of November, 1861, expressly say to Mr. Davis, "after a conference at Fairfax C. H. with these senior general officers, you announced it to be impracticable to give this army the strength which these officers considered necessary to enable it to assume the offensive?"

Does this statement conflict in the least with the statement by me? So far from conflicting with it, does it not sustain it to the very letter so far as it goes?

Then, as to the account of the Conference or Council of

War recently published by Generals Smith, Beauregard, and Johnston.

Does not this show clearly that General Johnston did desire in the early Fall of 1861 to make some sort of a forward or aggressive movement? Does it not show that a Council of War was held upon the subject at or near Manassas, at which Mr. Davis was present, in the latter part of September? Does it not show that General Johnston did submit for consideration such plan as I stated for an advance movement? Does it not show that Mr. Davis *disapproved* of it? Does not the paper to which you refer represent him as saying that "he could not take any troops from the points named?" Does not this paper expressly state in behalf of the General in Command that this answer of the President "was accepted as final and it was felt that there was no other course left but to take a defensive position and await the enemy."

Is there, my Dear Sir, anything in this statement in conflict with mine? Is there anything in the written paper to which you refer in conflict in the slightest particular with the statement of facts on this subject as it stands in the book? If there is, I assure you it has escaped my attention, and I repeat in conclusion, that if I had had that paper before me when my statement was written, I do not think that I could have made it more strictly in conformity with its general details than it now stands. I, therefore, as yet see no reason for revising or modifying the text in any particular. If there be any error in it, I do not yet perceive it.

Yours respectfully,

ALEXANDER H. STEPHENS.

ARTICLE VII.

THE BATTLE OF OLUSTEE, OR OCEAN POND.

I.—Editorial of the Savannah "Republican," July, 1870, on the Subject.

"*Olustee.*"

At the instance of a friend, we some days ago published the resolutions of the Confederate Congress thanking General Finegan for the success of the battle of Olustee or Ocean Pond, Mr. Stephens in his history having given the credit to General Colquitt. We had not the slightest idea then, nor have we now, of engaging in any controversy on the subject, our object being to bring to the attention of Mr. Stephens a fact which we thought he may have overlooked in preparing the materials for his history, viz.: that the command at Olustee was in the hands of General Finegan; and however brave and skilful subordinates may prove themselves, it is usual to ascribe the greatest glory of the victory to that officer. Mr. Stephens' reply to that publication, addressed to a gentleman of this city, who forwarded to him a copy of the *Republican's* article, will be found in another column.

II.—Letter of Mr. Stephens (referred to) on Same Subject.

Liberty Hall,
Crawfordville, Georgia, *July* 13, 1870.

Mr. Charles Ellis, *Savannah, Ga.:*

Dear Sir:—Yours of the 11th instant, inclosing a slip from the Savannah *Republican* of the 8th instant, was received by me this morning. That slip is in these words:

"'*Honor to Whom Honor is Due.*'—As there has been some effort — we are persuaded purely from the want of correct information — to deprive a brave officer of the credit that is his due, we transcribe from the Acts of the Confederate Congress as follows:

"'JOINT RESOLUTION OF THANKS TO GENERAL FINEGAN AND THE OFFICERS AND MEN OF HIS COMMAND.

"'*Resolved by the Congress of the Confederate States of America*, That the thanks of Congress are due and are hereby tendered to Brigadier-General Joseph Finegan, and the officers and men of his command, for the skill and gallantry displayed in achieving the signal victory of Ocean Pond, Florida, on the 20th of February last.

[Signed] THOS. S. BOCOCK,
"'Speaker of the House of Representatives.
R. M. T. HUNTER,
"'President *pro tem.* of the Senate.

"'Approved 17th of May, 1864.
"'JEFFERSON DAVIS.'"

You call my attention to this slip, but for what object or with what purpose you do not state; and I should be at a loss to imagine if I had not a few days ago received through the hands of a friend, a slip from another paper, in which comments were made upon the statement in the second volume of my work upon the war, in relation to the battle of Ocean Pond, referred to in the resolutions you have enclosed to me.

From this, and the language of the Editor of the *Republican* accompanying the reproduction of the resolutions, I am led to infer that you as well as Mr. Sneed and others, may be of opinion that the statement in the work referred to is calculated "to deprive a brave officer (General Finegan) of the credit that is his due."

If so, you and all others may be assured that nothing was further from my intention than any design of that character. My object was to give the facts of the case without detracting from or magnifying the merits of any one.

The statement in the book (vol. 2, page 581) is in these words:

"This year" (the third year of the war) "was ushered in, even in its dawn, by the splendid victory at Ocean Pond, Florida, on the 20th February, achieved under the lead of Brigadier-General Alfred H. Colquitt, against General Truman Seymour, commanding the Federals. With less than 5,000 men Colquitt put Seymour to rout, with more than 6,000;

killing, wounding, and capturing 2,500 men, and taking three Napoleon guns, two ten-pounder Parrots, and 3,000 stand of small-arms."

This is all in perfect accord with the facts as I understand them. It is true, as is well known, that the brave and gallant Finegan was in command of the general military operations on the Confederate side at that time in Florida.

But it is equally true, as I understand it, that he had assigned the entire command of all the Confederate forces engaged in the action at Ocean Pond to General Colquitt. The whole battle then, from beginning to end, was committed to his discretion, direction, and control; with but one limitation, and that was "if hard pressed to fall back to the works at Olustee station."

This splendid victory, therefore, was certainly, as I understand it, "*achieved under the lead of General Colquitt.*"

The affirmance of this truth, if the facts be as I think they are, by no means detracts from the *honor* conferred upon General Finegan by Congress, for his superior skill and forecast in having a concentration of forces to meet Gen. Seymour's advance; and in assigning the command of these forces to the officer he did. It only renders to General Colquitt that *honor* which is justly *due him* for the important part he acted, as one of the officers under General Finegan (and embraced equally with him though not named in the same resolution) "in achieving this signal victory."

This great result at Ocean Pond, so far as depended upon *field operations*, as I understand the fact, was *achieved* under General Colquitt's *immediate lead and general direction.* This is the substance of the statement in the book upon that subject; and I think upon close examination the facts will be found to be substantially as therein stated.

This certainly does not detract from the high merits of Gen. Finegan who had control of the general campaign.

You will please do me the favor to ask Mr. Sneed to give this communication a place in the columns of the *Republican.*

With kindest regards and sentiments of the highest respect, I remain yours truly,

ALEXANDER H. STEPHENS.

ARTICLE VIII.

THE FORGED SPEECH.

I.—Letter of Mr. Stephens on this Subject.

Liberty Hall,
Crawfordville, Ga., *October* 28, 1870.

Col. John W. Forney, Editor of the Sunday Morning Chronicle, Washington, D. C.:

Dear Sir:—I have just come in possession, through the kindness of a friend, of a copy of your paper of the 4th ult., and my attention is called to quite an extended editorial in it upon the "Constitutional View of the Late War Between the States," which requires special and prompt notice by me.

With the general tone and character of the editorial referred to, I have no disposition to complain, under the circumstances. On the contrary, for what you say in it of my position, and the general "respect" in which I was "held by the reflecting people of the country" before the "*Rebellion*," as you are pleased to call the late "war between the States," and of my efforts to preserve the Institutions of our ancestors on the Federative basis on which they were founded, you have my thanks. Of course all this was justly forfeited in your estimation, according to the views you entertain of the subject, by my subsequent conduct. Hence, what you say of "*Rebel Leaders*," and other things of like character, are but legitimate sequences from your premises; as is also your seeming *amazement* that any one should attempt to *justify* what you look upon as *treason*. These parts of your notice of the work, therefore, contain nothing more than might have been expected from any one occupying your position. Upon them I have no inclination to comment at present.

But you will indulge me in saying, I trust, that there is *matter* incorporated in this editorial, which, coming from the source it does, or being in this instance endorsed by your authority, as it is, I cannot permit to pass in silence. The wrong is too great, too grave, and too atrocious. The error is too foul and flagrant to be allowed to go to your readers without an exposure. The cause of truth and justice demands its correction by me.

In the article referred to, you say of the work you were reviewing:

> "And we have a second book of several hundred pages, justifying the rebellion against the Government, capable of all these great ends, and quoting the Constitution of the United States in the cause of that justification."

It is not my purpose at this time, to take any exceptions at your statement thus made of the object of the work; but what I do most decidedly object to is the *matter* which you adduced as argument "fully replying" to the positions maintained in the two volumes.

These positions you do not even attempt to assail yourself directly, nor do you venture to deny that, if they are correct, the "*justification*" claimed is *unquestionably established;* but you content yourself with an effort to meet and break the whole force of the truths set forth in the work, simply by a resort to the *argumentum ad hominem.*

This kind of argument, you very prudently concede, is not always legitimate, much less conclusive, inasmuch as you carefully admit that able, as well as true men, engaged in public affairs, are often inconsistent with themselves; and hence, what such may have said on one occasion is not always a sufficient answer to what may be said by the same on another occasion, though directly in conflict with it. In this case, however, you rely entirely upon this mode of reasoning, and rest yourself satisfied by saying that the positions of the book are "fully answered" by myself in a speech made by me in the Georgia Secession Convention, in 1861, which speech you give to your readers in the following words:

"This step (of secession) once taken, can never be recalled; and all the baleful and withering consequences that must follow will rest on the convention for all coming time. When we and our posterity shall see our lovely South desolated by the demon of war, which this act of yours will inevitably invite and call forth; when our green fields of waving harvest shall be trodden down by the murderous soldiery and fiery car of war sweeping over our land; our temples of justice laid in ashes; all the horrors and desolations of war upon us; who but this convention will be held responsible for it? and who but him who shall give his vote for this unwise and ill-timed measure, as I honestly think and believe, shall be held to strict account for this suicidal act by the present generation, and probably cursed and execrated by posterity for all coming time, for the wide and desolating ruin that will inevitably follow this act you now propose to perpetrate? Pause, I entreat you, and consider for a moment what reasons you can give that will even satisfy yourselves in calmer moments—what reasons you can give to your fellow-sufferers in the calamity that it will bring upon us. What reasons can you give to the nations of the earth to justify it? They will be the calm and deliberate judges in the case; and what cause or one overt act can you name or point, on which to rest the plea of justification? What right has the North assailed? What interest of the South has been invaded? What justice has been denied? and what claim founded in justice and right has been withheld? Can either of you to-day name one governmental act of wrong, deliberately and purposely done by the Government of Washington, of which the South has a right to complain? I challenge the answer. While, on the other hand, let me show the facts (and believe me, gentlemen, I am not here the advocate of the North; but I am here the friend, the firm friend and lover of the South and her institutions, and for this reason I speak thus plainly and faithfully for yours, mine, and every other man's interest, the words of truth and soberness) of which I wish you to judge, and I will only state facts which are clear and undeniable, and which now stand as records authentic in the history of our country. When we of the South demanded the slave trade, or the importation of Africans for the cultivation of our lands, did they not yield the right for twenty years? When we asked a three-fifths representation in Congress for our slaves, was it not granted? When we asked and demanded the return of any fugitive from justice, or the recovery of those persons owing labor or allegiance, was it not incorporated in the Constitution, and again ratified and strengthened by the fugitive slave law of 1850? But do you reply that in many instances they have violated this compact, and have not been faithful to their engagements? As individual and local communities, they may have done so; but not by the sanction of Government, for that has always been true to Southern interests. Again, gentlemen, look at another act; when we have asked that more territory should be

added, that we might spread the institution of slavery, have they not yielded to your demands in giving us Louisiana, Florida, and Texas, out of which four States have been carved, and ample territory for four more to be added in due time; if you, by this unwise and impolitic act do not destroy this hope, and, perhaps, by it lose all, and have your last slave wrenched from you by stern military rule, as South America and Mexico were; *or by the vindictive decree of a universal emancipation, which may reasonably be expected to follow?*

"Pause now while you can, gentlemen, and contemplate carefully and candidly these important items. Look at another necessary branch of government, and learn from stern statistical facts how matters stand in that department. I mean the mail and post-office privileges that we now enjoy under the General Government as it has been for years past. The expense for the transportation of the mail in free States was, by the report of the Postmaster-General for the year 1860, a little over $13,000,000, while the income was $19,000,000. But in the slave States the transportation of the mail was $14,716,000, while the revenue from the same was $8,001,026, leaving a deficit of $6,704,974, to be supplied by the North for our accommodation, and without it we must have been entirely cut off from this most essential branch of Government.

"Leaving out of view, for the present, the countless millions of dollars you must spend in a war with the North, with tens of thousands of your sons and brothers slain in battle, and offered up as sacrifices upon the altar of your ambition—and what for, we ask again? Is it for the overthrow of the American Government, established by our common ancestry, cemented and built up by their sweat and blood, and founded on the broad principles of *Right*, *Justice*, and *Humanity?* And, as such, I must declare here, as I have done before, and which has been repeated by the wisest and greatest of statesmen and patriots in this and other lands, that it is the best and freest Government—the most equal in its rights, the most just in its decisions, the most lenient in its measures, and the most aspiring in its principles, to elevate the race of men, that the sun of heaven ever shone upon. Now, for you to attempt to overthrow such a Government as this, under which we have lived for more than three-quarters of a century—in which we have gained our wealth, our standing as a nation, our domestic safety while the elements of peril are around us, with peace and tranquillity, accompanied with unbounded prosperity and rights unassailed—is the height of *madness*, *folly*, and *wickedness*, to which I can neither lend my sanction nor my vote."

Now, it is due to you and your readers, as well as myself, that I should make it distinctly and specially known to you and to them, as I hereby do, that I never made any such speech as that quoted by you, either in that Convention or

anywhere else. *It is forgery or gross fabrication from beginning to end.*

You have, perhaps, been unwittingly drawn into a mistake in this matter, as thousands of others have been imposed on in like matters pertaining to the war, as well as the true nature of the Government of the United States under the Federal Constitution, by taking for granted, and accepting as *true*, what you and they have received from others, without any examination, each for himself, into the truth of matters so surreptitiously served up and presented to public credulity. This speech, so attributed to me, was most flagitiously gotten up, and wickedly circulated by the perpetrators of the fraud, throughout the Northern States as a Republican campaign document in 1864, to mislead, as perhaps it did, thousands of voters in causing them to sustain those in power at Washington, who were then waging the war under the specious pretence and *false cry* of preserving the Union "with all the dignity, equality, and rights of the several States unimpaired," and which they never would have done if they had fully understood the real purposes, aims, and objects of the war on the part of those who were thus fraudulently misleading them, or of its ultimate results and consequences upon their own liberties, as well as those of the peoples of the Southern States.

You are, perhaps, the more excusable for falling into this great error from the fact that this *forged speech* has actually found its way into many of the *so-called* histories of the war, even in those of the character of Mr. Lossing's celebrated work, and that of the learned Dr. Draper. It is upon just such unreliable *data* and false *dicta*, however, you will please allow me to say, that all those *so-called* histories have been compiled, which attempt to *justify* the *subjugation* of the Southern States by the Northern States. When you yourself are better informed, perhaps, you may see the propriety of modifying your expression about Southern leaders. You will at least see that they are not so "*forgetful*" of "*records*" as you now imagine. They recollect not only "*their own records*," but the *records of others*. You will also find that nothing is more characteristic of them than their habit of *not* relying upon *false records* either in the

assertion of their rights or for the justification of their acts. They remember, too, something more "of the *ante-bellum* period than that there were Abolitionists in the North." They have a lively recollection not only of the fact that there were *Revolutionists* there bearing the cognomen of *Abolitionists*, but also of the fact that these Revolutionists got control of the Legislatures of a majority of the Northern States; which Legislatures, under their factious control and disloyal machinations, openly repudiated that clause in the Federal Constitution without which it is well known that Compact would never have been entered into. They know full well that the records—the true and imperishable records—which constitute the basis of every true history of this country established the fact, beyond the power of successful assault, that the Government of the United States is a government "*of States and for States.*" Moreover, that the Constitution is a Compact between States, and that this Compact was wantonly and avowedly broken by these Northern States under the lead of these same *Revolutionists*, whose aims and objects were and are Consolidation and Empire! It is upon the genuine and unmutilated records of the country Southern men stand; and with full confidence appeal to the enlightened judgment of mankind, now and forever, for the complete justification of their course and the righteousness of their cause. These records are exhibited in the volumes referred to, and the world is challenged, either to deny their authenticity or gainsay the conclusions therein drawn from them. Until one or the other, or both, of these is successfully done, this justification must be acknowledged to be complete for all time to come.

If you had carefully studied the work you were reviewing, you would have seen that *this very speech* quoted by you, as a part of my "*honorable record*," is noticed in volume 1st, page 23, and there exposed as a *forgery*. On page 305, volume 2d, you would also have seen what was really and in truth said by me in the Georgia Convention upon the subject of secession. That speech is the true record in this matter, which I neither forget nor ignore, and which it is proper your readers should see, and compare with the false one now in their hands. Its

leading points on the subject you essayed to quote me upon, as published in the papers of the day, are set forth in these words:

"MR. PRESIDENT: It is well known that my judgment is against Secession for existing causes. I have not lost hope of securing our rights in the Union and under the Constitution. My judgment on this point is as unshaken as it was when the Convention was called. I do not now intend to go into any arguments on the subject. No good could be effected by it. That was fully considered in the late canvass; and I doubt not every delegate's mind is made up on the question. I have thought, and still think, that we should not take this extreme step before some positive aggression upon our rights by the General Government, which may never occur; or until we fail, after effort made, to get a faithful performance of their Constitutional obligations, on the part of those Confederate States which now stand so derelict in their plighted faith. I have been, and am still, opposed to Secession as a remedy against anticipated aggressions on the part of the Federal Executive, or Congress. I have held, and do now hold, that the point of resistance should be the point of aggression.

"Pardon me, Mr. President, for trespassing on your time but for a moment longer. I have ever believed, and do now believe, that it is to the interest of all the States to be and remain united under the Constitution of the United States, with a faithful performance by each of all its Constitutional obligations. If the Union could be maintained on this basis, and on these principles, I think it would be the best for the security, the liberty, happiness, and common prosperity of all. I do further feel confident, if Georgia would now stand firm, and unite with the "Border States," as they are called, in an effort to obtain a redress of these grievances on the part of some of their Northern Confederates, whereof they have such just cause to complain, that complete success would attend their efforts; our just and reasonable demands would be granted. In this opinion I may be mistaken; but I feel almost as confident of it as I do of my existence. Hence, if upon this test vote, which I trust will be made upon the motion now pending, to refer both the propositions before us to a committee of twenty-one, a majority shall vote to commit them, then I shall do all I can to perfect the plan of united Southern coöperation, submitted by the honorable delegate from Jefferson, and put it in such a shape as will, in the opinion of the Convention, best secure its object. That object, as I understand it, does not look to Secession by the sixteenth of February, or by the fourth of March, if redress should not be obtained by that time. In my opinion, it cannot be obtained by the 16th of February, or even by the 4th of March. But by the 16th of February we can see whether the Border States and other non-Seceding Southern States will respond to our call for the proposed Congress or Convention at Atlanta. If they do, as I trust they may, then that body, so composed

of representatives, or delegates, or commissioners as contemplated, from the whole of the Slaveholding States, could, and would, I doubt not, adopt either our plan or some other, which would fully secure our rights with ample guarantees, and thus preserve and maintain the ultimate peace and union of the States. Whatever plan of peaceful adjustment might be adopted by such a Congress, I feel confident would be acceded to by the people of every Northern State. This would not be done in a month, or two months, or perhaps short of twelve months, or even longer. Time would necessarily have to be allowed for a consideration of the questions submitted to the people of the Northern States, and for their deliberate action on them in view of all their interests, present and future. How long a time should be allowed, would be a proper question for that Congress to determine. Meanwhile, this Convention could continue its existence by adjourning over to hear and decide upon the ultimate result of this patriotic effort.

"My judgment, as is well known, is against the policy of immediate Secession for any existing causes. It cannot receive the sanction of my vote; but if the judgment of a majority of this Convention, embodying, as it does, the Sovereignty of Georgia, be against mine; if a majority of the delegates in this Convention shall, by their votes, dissolve the Compact of Union which has connected her so long with her Confederate States, and to which I have been so ardently attached, and have made such efforts to continue and perpetuate upon the principles on which it was founded, I shall bow in submission to that decision."

Your readers, as well as yourself, I think will be constrained, whether reluctantly or not, to come to the conclusion, if the positions maintained in the "two volumes" under consideration are to be "fully answered" or can be "entirely demolished" by weapons from my own armory, very different materials from any thing in this speech, or any thing really said by me in that Convention will have to be brought forward for the purpose. I think, also, that an intelligent public in this day, as well as in all future days, will require a different sort of argument than any thing to be found in this speech to upset those positions of the work whereby *complete justification* is not only *claimed*, but *established*, for what the Southern States did in the late war for the maintenance of the great principle of the Sovereign Right of Local Self-Government by the people of the several States of this continent, and which lies at the foundation of the whole fabric of the American Federative System for the establishment and perpetuation of Free Institutions by neighboring States.

ALEXANDER H. STEPHENS.

ARTICLE IX.

REPLY OF MR. STEPHENS TO MR. ATTORNEY-GENERAL AKERMAN'S DENUNCIATIONS OF THE WORK.

LIBERTY HALL,
CRAWFORDVILLE, GA., *September* 21, 1870.

To the Editor of the Constitutionalist, Augusta, Georgia:

DEAR SIR:—You will, I trust, allow me the use of your columns to take such notice of two speeches recently made by Hon. Amos T. Akerman, Attorney-General of the United States, as I think due to myself, due to him, and due to *some*, at least, of the very grave matters referred to by him in both.

In the first of these speeches, made at Washington City, I am directly charged and accused by him with having promulgated doctrines which he characterizes as "*pernicious*," and which he says "*must be suppressed*."

In the other of these speeches, delivered at Atlanta, Georgia, while my name is omitted; yet his official denunications, in like spirit, are chiefly directed against the same political heresies, according to his standard.

These dangerous and "pernicious doctrines" he is pleased to say, are to be found in the two volumes published by me upon the "Late War between the States."

This *quasi* public arraignment by the Attorney-General of the United States, and would-be, perhaps, "Crown Officer" of a firmly established Empire, I am by no means disposed to evade; and, therefore, ask the favor, through the medium of the *Constitutionalist*, to enter a *traverse*, and to make known to him and to the world, that I hold myself in readiness to meet him, or any body else, upon the merits of his "Bill of Information," thus filed; and without any technical exceptions on my

part, as to the informality in which it has been brought forward.

The only tribunal I desire is the bar of an enlightened public opinion. The only arena I wish, for the settlement of all the questions involved, is the forum of reason; where no weapons or force are to be used, but the power of truth and logic. So armed on such a field, I do not shrink from the fullest investigation of all matters discussed in the work, to which he alludes, nor from the judgment which may be rendered upon them, after such a hearing, by the intelligent and unbiased of the present or future generations.

What, then, are the errors in fact or argument in either of the volumes referred to, which, in the opinion of this high officer, are so dangerous and "*pernicious*"—*so poisonous and death-producing*—as that they ought not to be thus inquired into, or even tolerated by discussion, but ought to be summarily and arbitrarily "*suppressed?*"

1st. Is it an erroneous, and "*pernicious doctrine*" to maintain, as the book does, that the United States constitute, not a *single* Republic, but a *Federal* Republic; and that the *Union*, about which Mr. Attorney-General says so much, is a *Federal Union*—a Union of separate, distinct States, each State of the Union being a perfect State, as known in Public Law?

2d. Is it an error in fact or doctrine to maintain, as the book does, that these States, upon entering into this Union, were recognized by themselves, as well as other powers, as separate, independent, Sovereign States?

3d. Is it an error in fact or doctrine to maintain, as the book does, that the Constitution of 1787 is the basis of the present Union; and that it was formed *by* the States in their sovereign character, and *for* them in their sovereign character: or, in other words, that it is a Constitution "made by States and for States;" and that the Sovereignty of the States was not parted with by them in its ratification?

4th. Is it an error in fact or doctrine to maintain, as the book does, that the Federal Government is entirely *Conventional* in its character—that it was created by the States solely with a view to the better regulation of their inter-State and foreign

affairs, and the greater security of their perpetual existence as Sovereign States, by their mutual pledge and guaranty to this end — and that the Federal Government, so created, possesses no *inherent* powers whatever — that all the powers it rightfully holds, or can rightfully exercise, are held from the States, and from them by delegation only?

5th. Is it an error in fact or doctrine to maintain, as the book does, that all the powers, so held by this Federal or Conventional Government, are particularly enumerated and limited in the Constitution; and that the exercise of any power outside of these limitations is nothing but a usurpation, and should be set aside by the courts as a nullity?

6th. Is it an error in fact or doctrine to maintain, as the book does, that the Constitution of the United States, so made, was a *Compact between* the States ratifying it — the States being the parties to it; and that it is binding *between* them, as all other like Compacts by the laws of nations?

7th. Is it an error in fact or doctrine to maintain, as the book does, that all delegated powers by Sovereign States can, by the laws of nations, be rightfully resumed by the party delegating them, when the purposes for which they were delegated are not attained?

8th. Is it an error in fact to assert, as the book does, that quite a number of the Northern States of the Union, before the Secession of any of its Southern members, (under the influence of that faithless faction which now rules this country by fraud and usurpation,) did openly and confessedly refuse to perform their covenanted obligations under a clause of the Constitution, without which that Compact never would have been agreed to, or the Union, under it, entered into by the Southern States?

9th. Is it an error in fact to state, as the book does, that the present Chief-Justice Chase fully admitted this breach of faith on the part of these Northern States; and openly declared in the Peace Congress in February, 1861, that they never would perform these admitted obligations on their part?

10th. Is it an error in fact to maintain, as the book does, that no one of the Southern States which seceded or attempted to secede from the Union, because of this breach of faith, on the

part of their Confederates, was ever *untrue* to her covenants in the Compact of Union?

11th. Is it an error in fact or doctrine to maintain, as the book does, that this open and confessed breach of faith on the part of their Northern Confederates, according to the laws of all nations, whether savage or civilized, completely absolved the Southern States from their obligations under the Compact, and fully justified their withdrawal?

12th. Is it an error in fact to maintain, as the book does, that the Covenant-Constitution-breaking States did afterwards hold, that the Seceding States were still bound to perform their part of the Compact, notwithstanding their own acknowledged breach of faith, and that they went to war against them to compel them to remain in the Union, and discharge their obligations under the Constitution?

13th. Is it an error in fact or doctrine, to maintain, as the book does, that the war, thus inaugurated, was a "War between States," and in no proper or just sense a Rebellion or Civil War?

14th. Is it an error in fact to maintain, as the book does, that the only pretext on the part of the Northern States, for waging this war, thus inaugurated between the States, was "the preservation of the Union of the States, with all the dignity, equality, and rights of the several States unimpaired?"

15th. Is it an error in fact to maintain, as the book does, that when the Seceding States abandoned their struggle for a separation, and agreed to the terms of capitulation, which was substantially an acquiescence, so far as armed resistance was concerned, in the declaration upon which the war was waged against them; the other States, the Covenant-breakers themselves — under the rule of the same revolutionary faction — after the sacrifice of *hundred of thousands of lives* and *thousands of millions of dollars*, changed their position in Congress, and said that they could not safely permit that to be done for which they had waged the war — that they could not safely allow a restoration of the Union of the States under the Constitution for which they had shed so much blood and expended so much treasure! But that these acquiescing States should be shorn of their

"dignity, equality and rights" by a process of "Reconstruction" according to their liking, though outside of the Constitution, before being allowed representation in the Congress of the States?

16th. Is it an error in fact or doctrine, on the review of this conduct, to ask, as the book does, "Is there to be found in the annals of mankind a parallel of such unblushing, double-faced, insolent, and infamous iniquity?"

These, Mr. Editor, are a few of the positions and doctrines maintained in the two volumes referred to by Mr. Attorney-General; and if they, founded, as they are, upon indisputable facts, set forth irrefutable truths, to what or whom, let me ask him and the world, is their promulgation either dangerous or "*pernicious?*" Is it to the cause of public liberty, or to the true friends of the institutions of our ancestors, or only to the policy and secret designs of those who are aiming at their overthrow and subversion?

Mr. Attorney-General in his Bill of Information makes very few distinct specifications touching the "*pernicious*" doctrines of the two volumes which, he says, "*must be suppressed.*" Two only of these are deemed worthy of notice at this time.

The first is, that I have asserted that "the Reconstruction measures were monstrous, and pronounced that all the Government had done for four years was monstrous, and threatened the liberties of the people."

In answer to this I have simply to say, that if the foregoing positions maintained in the book are unassailable, is it not undeniably true that the whole of "these Reconstruction measures," with all their concomitants, are not only *monstrous outrages*, but most *deadly blows* directed at the very *vitals* of the Constitution, as well as the liberties of the people?

The other of these specifications is, that I have attempted to show that "Marshall," and others named by him, "were wrong, and that Calhoun was right" in his views of the Constitution.

In answer to this charge it is only necessary to refer to the book itself, which Mr. Attorney-General may very well wish to have suppressed, if for no other object than to shield himself

from the exposure of having made a very unfair statement, not to say palpable misrepresentation. In the book no opinion of Marshall is assailed; but, on the contrary, some of the most important positions in it — those doubtless deemed by the would-be "Crown Officer," most "*pernicious*" to his own views, aims, and objects — are not only fortified but incontestably established by the authority of this eminent Chief-Justice of the Supreme Court of the United States.

It was he who announced from the Bench of that Court the most "pernicious doctrine," that the States composing this Union at the time, formed their present Constitution as Sovereign States.

It was he who held and proclaimed from the same Bench, that all the Legislative powers of the Congress of States, under the Constitution, depended upon the will of a majority of the States.

It was he who held in the Convention of Virginia that ratified the Constitution, that the powers conferred by that instrument could be rightly resumed by those who conferred them.

This, perhaps, is the most "*pernicious*" of all the doctrines set forth in the book, which Mr. Attorney-General is so anxious to have "*suppressed.*" And perhaps, moreover, the true solution of his unqualified denunciation of the whole work is, that the array of facts presented in the two volumes, and the irresistible conclusions established by them, are so "*pernicious*" to the schemes of the would-be "Crown Officer" and his co-workers in the erection of a Centralized Empire over the ruins of the principles of that wonderful Federal Union, established by the "Fathers," that they cannot be tolerated by them; and hence the official mandate, that the doctrines therein set forth "*must be suppressed!*" Potent words these, and of most ominous significance, coming from the quarter they do! They express the unmistakable language of tyrannical men in power in all ages and countries, when they feel the force of truths which are indeed dangerous and most "*pernicious*" to their own guilty acts of usurpation upon the rights of States, as well as the liberties of outraged peoples! This language from the present Attorney-General smacks strongly of like Cabinet anathemas of the Nationalists, Centralists, and Consolidationists of this

country in 1798–'99 which ended in the ever-memorable Alien and Sedition "*laws, so called,*" of that period.

The doctrine of the advocates of Constitutional Liberty under our Federative System at that day, as promulgated, not by Mr. Calhoun, as Mr. Attorney-General most adroitly attempts to make the people believe, but by Mr. Jefferson and his associates, was, that these *acts of usurpation* were not *laws* but *nullities.*

The doctrines inculated in the two volumes referred to, Mr. Attorney-General well knows, are the doctrines of Mr. Jefferson — the great apostle of the American Federative system, for the maintenance and preservation of free institutions by neighboring States. They are the doctrines which in 1798–'99 were, as now, considered exceedingly "*pernicious*" to their schemes by all the enemies of these institutions. By the earnest promulgation of these doctrines, and a firm maintenance of them, at the polls, by the peoples of the several States of this Union, the rights of the States, as well as their own, were rescued from the hands of usurpers at that time; and on a like promulgation and maintenance of the same doctrines at this time, rests the only sure hope of the future rescue and preservation of the same rights and liberties from the hands of the usurpers who now bear sway. One of the most important as well as saving of the principles of these doctrines is that no danger need ever be feared in a free country from any error of opinion or doctrine however great, "where reason is left free to combat it."

This Cabinet ukase of Mr. Attorney-General shows nothing more clearly than the *power of the truths* promulgated in the two volumes thus denounced. He and his associates know and feel, that, by nothing short of a suppression of these truths directly or indirectly, and the obliteration, if possible, of all the great facts of our history, can they bring the public mind to receive the doctrine attempted to be instilled by him in his Atlanta speech; which amounts to this: that the States of this Union have no higher position in the scale of existence than mere legal corporations.

Shades of Ames, Samuel Adams, Parsons, Ellsworth, Hancock, Madison, Hamilton, Marshall, Jackson, Jefferson, and Washington!

I will not say that such a doctrine ought to be suppressed; but with all the respect for high official position which I can command, I will say, that the Attorney-General of the United States, in putting forth such sentiments ought to have blushed; if not for his own reputation, at least, from a proper sense of reverence for the memories of the illustrious dead!

The Union of these States, nothing but a Union of a sort of corporations to be fashioned, moulded, controlled, and shorn of their rights by and at the will of the Central Government!

This "Confederacy" of States, as Marshall styled it on the Bench of the Supreme Court — this "Confederated Republic," as Washington styled it in his message to the Senate — this "Union of Sovereign Members," as Jackson spoke of it in his Inaugural Address, according to the teachings of the present Attorney-General, is nothing but an aggregation of corporations! Bare creatures of municipal law! This, in substance, is my understanding of *his* most *insidiously*-inculcated Imperializing doctrine.

If by the *suppression of truth*, this doctrine can be established, then, indeed, will be consummated that most lamentable result which Hamilton thought need never be feared, even by the most vigilant and zealous guardians of popular rights, when he declared in the Convention of New York, which ratified the Constitution, that "*The States can never lose their Powers till the whole people of America are robbed of their Liberties.*"

Yours, most respectfully,

ALEXANDER H. STEPHENS.

ARTICLE X.

I.—Reply of Mr. Stephens to Criticism of the Atlanta (Ga.) "New Era."

Liberty Hall,
Crawfordville, Ga., *Nov.* 19, 1870.

To the Editor of the New Era, Atlanta, Ga.:

Dear Sir:—In the weekly issue of your paper of the 16th inst. is an editorial article (the same having also appeared in the daily issue of the 11th inst.) headed "Hon. Alexander H. Stephens and the Constitutional Right of Secession," which contains matter deserving notice from me.

This article, as it stands, is well calculated to cause those of your readers, who are not conversant with the whole subject, to form very erroneous conclusions both in reference to myself, and in reference to what you are pleased to consider the "pernicious" doctrines I have maintained in the work referred to by you in the same article, in relation to the true nature and character of the Government of the United States.

You will, therefore, I trust, allow me the use of your columns to set the issues you make rightly before that portion of the public to whom your article was addressed. Be assured, my whole object in this communication, as well as whatever else I may have written on the subject, is the establishment of *truth;* and *truth*, in my judgment, is pernicious to nothing but *error*, in the science of government, as well as in all other matters of human investigation, whether political, ethical, or mathematical. In the article referred to you say:

"Mr. Stephens has written two large octavo volumes, entitled 'The War Between the States,' in vindication of the doctrine of ultimate Local Allegiance or State Sovereignty, and consequently in justification of the act of Secession, as exercised by the Georgia Democracy in 1861. That

Mr. Stephens should have written such a book, under the circumstances which he did, having for its object the advocacy of a theory which experience has demonstrated to be not only impracticable, but likewise destructive of the peace of society, surprised none more than it did many of his earliest and best friends in Georgia.

"The book can do no possible good. Its direct tendency is, and will be, to stimulate a reorganization of a party hostile to the Government."

To this, allow me, in the outset, to say that it was not the object of the work alluded to, to set up, advance, or advocate any mere *theory* as to the nature or character of the Federal government under the Union of the States as established by the Constitution. This is not a proper subject for theory or speculation of any sort. It is eminently a question of facts. My object was simply to set forth *truthfully* the *indisputable facts* of history upon which it rests; with the irresistible conclusions logically flowing from them. This was the object of the work, and has this been done, should be the only inquiry of a mind wedded to truth. If it has, why should any one of my early and best friends in Georgia, or elsewhere, be surprised at my course? Is there any thing in my whole life which could have caused them to expect any other? If it has not, then I grant my course in this particular ought to be a cause of surprise to all who know me, and what I have adduced as *facts* ought to be exposed as grave errors and mischievous impositions. This no one in the United States has yet attempted or ventured to do, so far as I am aware. The real question, therefore, is not whether experience has demonstrated any "*theory*" of mine to be "*impracticable*," but whether experience has demonstrated that the Government, as it was made and instituted by the Fathers, was "not only impracticable but likewise destructive of the peace of society." Is it true, then, that the matchless system of government instituted by our ancestors was "not only *impracticable* but *destructive* of the peace of society?" This is, certainly, your position if the *facts* and *truths* of our history be as they are set forth in the book referred to, which you virtually admit by not venturing to gainsay or deny them. Far be it from me to entertain any such idea of the majestic and renowned workmanship of the statesmen of 1787, who framed the present Constitution for the government of the

several sovereign States, which might enter into a union under it, with a view to the establishment of justice, the preservation of domestic tranquility, and the promotion of their joint general welfare, as well as for the security of the blessings of liberty to themselves and to their posterity.

Of this novel and wonderful frame-work Lord Brougham, in his Political Philosophy, has well said: (Italics mine.)

"It is not at all a refinement that a Federal Union should be formed; that is the natural result of men's joint operations in a very rude state of society. But the regulation of such a Union upon preëstablished principles, the formation of a system of government and legislation in which the different *subjects* shall be *not individuals*, but *States*, the application of legislative principles to such a *body of States*, and devising means for keeping its *integrity* as a *Federacy* while the rights and powers of the individual States are *maintained entire*, is the very greatest refinement in social policy to which any state of circumstances has ever given rise, or to which any age has ever given birth!"

May not the disturbance "of the peace of society" to which you refer—(the late most lamentable war)—have arisen rather from an *error*, on the part of those who inaugurated it, as to the true nature and extent of the powers confided to them than from any *defect* in the frame-work of the Government itself. Nay, is not this demonstrated in the book? The great question discussed in the "two large octavo volumes" is, who was in the *right* and who was in the *wrong* in this recent terrible conflict. If it is clearly shown therein, that the responsibility of this disturbance "of the peace of society" rests with all its weight upon those who wrongfully claimed and exercised unauthorized power, then experience in this instance has demonstrated nothing but that even written Constitutions are not always proof against the usurpations of rulers. This experience has by no means demonstrated that the institutions of our Fathers were not altogether practicable, wise, just, right, and embodying "the very greatest refinement in social policy" to which any age has ever given birth; looking to the best interest, peace, safety, security, liberty, and happiness of mankind.

But you say that the facts and truths established in the book (for as before stated, you must be considered as admitting them

to be correct, as you do not assail them) will have a "direct tendency" "to stimulate a reorganization of a party hostile to the Government."

In this you will allow me to say, that either you or I greatly err in judgment. The direct tendency of these truths, as was and is one of the objects of their promulgation, will be the reorganization of a party in perfect *harmony* with the Government, animated with a thorough devotion to those principles upon which it was founded and by the maintenance of which alone its incalculable blessings can be perpetuated. The tendency will be the organization of a party *hostile* to nothing but those principles of *mal-administration* of government—those gross and palpable usurpations, from which all our late troubles with their ruinous results arose, and from which, if not abandoned, like troubles, with even worse results, may be looked for in the future. The *Government* is one thing and the *administration* of it quite another. No system of Free Representative Government can be long continued where the people do not understand its principles and cherish a patriotic devotion to them, with an inflexible virtue enlisted in their maintenance. The direct tendency of the truths presented in the "two volumes" to which you refer, will be to impart the requisite knowledge of our wonderful confederate system, and at the same time inspire a patriotic admiration of the beauty and grandeur of its structure, as well as zeal and integrity in its support and perpetuation. Individually, I have ever regarded it the wisest and best system of government for neighboring States ever instituted by man. No one ever was or could be more devoted to its principles than I have been and am. With me in all things political, this devotion controls every other consideration. Now, as heretofore, I can say on this point:

> "All thoughts, all passions, all delights,
> Whatever stirs this mortal frame;
> All are but ministers of love
> To feed this sacred flame."

So far, therefore, from the tendency of the truths promulgated by me, as to the nature and character of the Government, being to stimulate the organization of a party *hostile* to it, the

tendency will, in my judgment, be directly to the contrary; that is, the tendency will be, through an enlightened and patriotic public sentiment, to bring the administration of the Government back from its present usurpations, and restore it to its *true* pristine principles under which it was so prosperously and so happily conducted for nearly three-quarters of a century.

So much by way of reply to your introductory remarks. I now wish to call the attention of your readers to that part of your article in which you attempt (it seems to me) to break the force of the great truths of our history as set forth in the work, not by any direct attack upon them, or the facts upon which they rest, but by giving out that they are inconsistent with what I had maintained on a former occasion. On this line you say:

"That Mr. Stephens should have thus become the champion of the party of Destruction is most remarkable. It clearly implies either a radical change in his political views since 1860, or it raises a presumption against his sincerity. The latter is hardly admissible. We have too high an opinion of Mr. Stephens as a man, to charge him with insincerity. And yet the alternative of fickleness, while it is inevitable, is very little less complimentary. His calm and statesmanlike speech of November 14th, 1860, delivered before the Georgia Legislature at Milledgeville, and which was generally copied by the press all over the United States, is in strange contrast with the pernicious and revolutionary teachings in his book."

You go on further to say:

"In that speech Mr. Stephens discusses the merits of Secession in the following calm and powerful language:

"'The first question that presents itself is, Shall the people of the South secede from the Union in consequence of the election of Mr. Lincoln to the Presidency of the United States? My countrymen, I tell you frankly, candidly, and earnestly, that I do not think they ought. In my judgment, the election of no man, constitutionally chosen to that high office, is sufficient cause for any State to separate from the Union. It ought to stand by and aid still in maintaining the Constitution of the country. To make a point of resistance to the Government, to withdraw from it because a man has been constitutionally elected, *puts us in the wrong. We are pledged to maintain the Constitution.* Many of us have sworn to support it. Can we, therefore, for the mere election of a man to the Presidency—and that, too, in accordance with the prescribed form of the Constitution—make a point of resistance to the Government *without becoming the breakers of that sacred instrument ourselves by withdrawing ourselves from it?* Would we not be in the wrong? Whatever fate is to befall this

country, let it never be laid to the charge of the people of the South, and especially to the people of Georgia, that we were *untrue to our national engagements*. . . . We went into the election with this people. The result was different from what we wished; but the election has been constitutionally held. Were we to make a point of resistance to the Government, and go out of the Union on that account, the record would be made up hereafter against us.'

"We have italicized the words in the above to which attention is especially directed. It will be observed that Mr. Stephens here assumes that, because the people of Georgia stood 'pledged to maintain the Constitution,' therefore they ought not to secede; and that they could not do so without 'becoming the breakers of that sacred instrument.' Where, then, is the Constitutional 'right' of Secession, so insidiously taught in 'The War Between the States?' Where, then, is the infallible truth of the proposition that, since the ultimate allegiance of the citizen is due the State, as against the Federal Government, the citizen may make resistance to the General Government, under the sanction of State authority, without violating or 'breaking' the Federal Constitution? The truth is, Mr. Stephens of 1868 and 1870 reverses Mr. Stephens of 1860 and 1861."

In response to this part of your article, for the information of your readers, it is proper to remind you that you have only quoted, not exactly, but substantially correct—(see Constitutional View, 2d vol., page 280), a part of the speech to which you refer, and that part in which I did maintain that secession, in my judgment, would not be justified even in the exercise of a sovereign not "constitutional" right, as you seem to suppose, upon the bare election to the office of President of any man, however inimical he might be to the principles of the government of the United States. But while in that part of the speech I did maintain that no State, in my judgment, would be justified in the exercise of her sovereign right in withdrawing from the Union, because of the election of Mr. Lincoln to the Presidency, yet I did not *thereby assume*, or maintain that no State could rightfully exercise her sovereign powers in withdrawing from the Union for any cause whatever. Far indeed was any such position from any thing said in that speech.

This is not a matter of disputation about words. The speech itself, from which you quoted, settles all doubts that might arise from isolated sentences or parts. After stating most earnestly and distinctly, that I did not consider the election of Mr. Lincoln a sufficient cause to justify secession, I went into the con-

sideration of other causes, which were of a different character, and, though I did not think it either expedient, or wise, or politic, to secede for any of them under the circumstances existing at the time, yet I did most fully declare my opinion to be, that secession for these causes would be justified if Georgia in her sovereign capacity should determine to exercise her sovereign right to withdraw. The justification of the act, however, did not render the exercise of the power, at the time and under the circumstances, either judicious or expedient in my judgment. Hence my earnest appeal in that speech after the full consideration of all the causes of complaint, as well those which would justify as those which would not, against the exercise, at that time, of the great sovereign right of secession for any of them. My opposition to secession for those other causes was not as to the *right*, but the *policy*, of the measure. In this appeal, among other things, I said what follows:

"But it is said Mr. Lincoln's policy and principles are against the Constitution, and that if he carries them out it will be destructive of our rights. Let us not anticipate the threatened evil. If he violates the Constitution, *then will come our time to act*. . . . I do not anticipate that Mr. Lincoln will do any thing to jeopard our safety or security, whatever may be his spirit to do it; for he is bound by the Constitutional checks which are thrown around him, which at this time render him powerless to do any great mischief. This shows the wisdom of our system. The President of the United States is no Emperor—no Dictator. He is clothed with no absolute power.

"Now upon another point, and that the most difficult, and deserving your most serious consideration, I will speak. What is the course which this State should pursue toward those Northern States, which, by their legislative acts, have attempted to nullify the fugitive slave law?

"Northern States, on entering into the *Federal Compact*, pledged to surrender such fugitives; and it is in disregard of their Constitutional obligations that they have passed laws which even tend to hinder or inhibit the fulfilment of that obligation. *They have violated their plighted faith.* What ought we to do in view of this? That is the question. What is to be done? *By the law of nations, you would have a right to demand the carrying out of this article of agreement, and I do not see that it should be otherwise with respect to the States of this Union. . . . The States of this Union stand upon the same footing with foreign nations in this respect.*

"Now, then, my recommendation to you would be this: In view of all

these questions of difficulty, let a *Convention* of the people of Georgia be called, to which they all may be referred. Let the *sovereignty* of the people speak. Some think the election of Mr. Lincoln is cause sufficient to dissolve the Union. Some think those other grievances are sufficient to justify the same, and that the Legislature has power thus to act, and ought thus to act. I have no hesitancy in saying that the *Legislature* is not the proper body to *sever our Federal relations*, if *that necessity should arise*. . . . I do think, therefore, that it would be best, before going to *extreme measures* with our *Confederate States*, to make the presentation of our demands, to appeal to their reason and judgment to give us our rights. . . . At least, let these offending and derelict States know what your grievances are, and if they refuse, as I said, to give us our rights under the Constitution, I should be willing, as a *last resort, to sever our ties with them.*

"My opinion is, that if this course be pursued, and they are informed of the consequences of refusal, these States will recede, will repeal their nullifying acts; *but if they should not, then let the consequences be with them, and the responsibility of the consequences rest with them.*"

From these extracts (parts of which I have italicized) it most clearly appears that at the very time I urged that the bare election of any man to the Presidency, however inimical his principles might be to the Constitution, was not, in my judgment, a sufficient cause to justify the withdrawal of a State from the Union; I also fully admitted that for other causes, and other causes then existing, if not removed, the Southern States would be fully justified in withdrawing, if they should so determine to do in their sovereign capacity. *These causes, as is well known, were not removed.* It was for these causes the Southern States did secede or attempt to secede.

When I maintained in that part of the speech, which you quoted, that because the State of Georgia "was pledged to support the Constitution," she, therefore, in my judgment, ought not to secede on account of Mr. Lincoln's election, or in anticipation merely of an act of aggression on his part, I did not thereby assume or assert that she could not, in my judgment, rightfully secede for the other causes. On the contrary, it is clearly stated, that it would be her sovereign right to do so if she saw fit. It is true my judgment against the policy of exercising the right for any of the then existing causes, without further efforts for their removal, was most earnestly urged; but

the right to withdraw for these other causes was not questioned by me in any part of that speech.

Nay, more, I expressly declared that my allegiance would be yielded to the sovereignly-expressed will of Georgia, whatever course she might take.

There is certainly no inconsistency between the principles maintained on this whole subject in the speech alluded to, and those maintained in the "two volumes" to which you refer. Nor is there any inconsistency between the principles of this speech in whole or in part; and the great truths set forth in those volumes touching the nature and character of the government of the United States, which you deem so pernicious, destructive, and revolutionary.

Intelligent readers will, I think, require something more effective to break the force of these truths than any inconsistency to be found between them and the principles advocated by me in 1860; and they will, moreover, require, I think, something of a very different character from any thing to be found in the speech made by me to which you have alluded—taken altogether as it should be—to show that "Mr. Stephens of 1868 and 1870 reverses Mr. Stephens of 1860 and 1861."

In this connection you will allow me to say, that whatever other demerits may properly be laid to my charge during a rather long political course, that of "fickleness" on these questions or inconsistency with myself on the subject of State sovereignty, and the proper relations between the States and the Federal Government under our Union, is not one of them. I have now before me a printed copy of the first political address ever made by me. It was delivered in this village on the 4th day of July, 1834, while I was a student of law, and before my admission to the bar. For your own information, as well as that of your readers, on the point of my inconsistency and "fickleness," I submit for your and their consideration the following extracts, which are not less pertinent now than then:

"The mind, therefore, at our annual festivals similar to the present, should not, as is often the case, be permitted to be filled so much with rejoicings over the past, as engaged in earnest contemplations of the future. The warfare of Liberty is continual, and there is no time for the patriot

to luxuriate on the past, or feast on the spoils of victory. The field is never to be quit—the post never deserted—but battle succeeds battle in a chain as various and as endless as the diversity of character and the succession of generations.

"With these remarks I submit to your attention, briefly, the consideration of a subject which I deem not as inappropriate to the object of our assembling; one in which we all, as the friends of Liberty in general, and particularly as citizens of the United States, are deeply interested, and one which, in my opinion, involves principles pregnant with as momentous consequences as any which have ever agitated the public mind of the American people. I allude to the extent of the powers of the Federal Government, or the true relation between the Federal and State Governments. There are those among us who contend for the ultimate supremacy of the former, while others for that of the latter. The struggle is one for power on one side, and right on the other. . . . Most essential, then, to its preservation in its primitive purity, should the principles of the Federal compact be thoroughly examined, and clearly understood by every one.

. . . . . .

"That I may be plain in establishing these important assumptions, I lay it down as an undeniable truth, this power was not vested in Congress at the first union of these States which resulted in the Declaration of Independence, nor during the time which intervened between that period and the adoption of the articles of the Confederation. I lay it down also as a truth, that it was not conferred by the articles of the Confederation. Thus far my premises *must* be admitted by all, for the first article of the Confederation expressly declares the sovereignty or supremacy of the States severally. I proceed, then, likewise to assert that this Supreme Power is not conferred by the present Constitution. Were this also admitted, there would be an end to the discussion. But here the issue is joined. Then to the proof. And in the first place, if the Constitution contains such grant of power, it must be *implied*, for it is not *expressed*.

"But, say the advocates of a strong Government, there is no necessity for its being expressed; that *it is implied*, and that it is *implied* from the nature and character of the Constitution, and the circumstances which gave rise to its formation. For, say they, the main object of the Constitution was to obviate and remedy evils which arose under the weak administration of the former Confederation from the want of this very power. They admit that anterior to the Constitution, Congress had not this power—that the States were separate and distinct sovereignties; and they tell us that at that time our nation was in debt; that our trade was languishing; that our credit was lost; that our character was dishonored; that there was no remedy; Congress enacted but the States disregarded; there was no force binding the people, and finally, they tell us that it was

to check all these evils, and remedy this whole state of deranged affairs by binding the States to the decision of Congress, and, in a word, by depriving them of their sovereign *veto*, that the present Constitution was formed, and therefore, though this be not all *expressed*, yet it *must* be implied from the very nature of things, etc. Now, that these evils did exist under the Confederation to a great extent, is admitted, and that many of them were remedied by the present Constitution is also admitted; but the inference as to the *origin* or cause of these evils, and the *nature* of their remedy, is erroneous. They did not originate (according to the inference) from a want of superior force or power in Congress to bind the States, but from the limited number of subjects and objects of national policy upon which the States had permitted Congress to act, and their attempting to exercise powers not granted. It is true our nation was in debt; that our trade was languishing; that our credit was lost, and that Congress enacted upon these subjects, and that the States disregarded those enactments. And why? For the plainest reason in the world: Because Congress, the agent of the States, was meddling with matters and enacting upon subjects with which it never had been entrusted with sufficient and proper powers to do the business as it ought to be done, and not as the inference would imply, because there was a want of power to compel the States to comply with their solemn engagements. This want of power did exist, but the evils did not arise from that; and so far from its being the main object of the new Constitution, this was not its object at all. It is true its object was to remedy the evils of the Confederation. But it was to have remedied them as they should have been remedied—*by entrusting more business to the care of the agent*, or in other words, by permitting Congress to act upon more subjects which experience had shown the public convenience required. . . . This was the object of the Constitution. This was what the Constitution effected. While the obligation on the part of the States as States to observe and obey an edict of Congress is the same now as before the adoption of the present Constitution. The Government has not changed its name even. Its powers were enlarged, but its character is the same; and the relation between the States and this Government have been multiplied, but the nature of those relations is unaltered. The new Constitution is a compact between the sovereign States separately, as the old Confederation was; and if this be so, and if the first article of the Confederation expressly declares that sovereignty or supremacy is retained to the States—denying the right or power of Congress to coerce or compel the States, the parties to it, to obey its edicts—where is this right or power derived under this present Constitution? Indeed, fellow-citizens, I am constrained to think that it is derived nowhere, and that it has its existence only in the breasts of the parasites of power who wish to overthrow the liberties of the people."

These extracts, whatever may be thought of the style or

logic of the juvenile argument, will suffice to show you and your readers, I think, at least, that "Mr. Stephens," as early as 1834, as well as in 1860 and 1861, maintained substantially the same principles touching the nature and character of our Confederate system of government, and the relation of the States to the Union under it, which he did in 1860, and does in 1870. If he ever performed an act, or uttered a sentiment, inconsistant with the doctrines announced in 1834 on this subject, he is not aware of it. Throughout his public life, he has maintained that the underlying principle of the whole structure of American free institutions is the ultimate absolute sovereign right of local-self-government on the part of each State, constituting the several members of the system. This the *indisputable facts* of our history show to be true! He believes, moreover, with the utmost sincerity, that if the promulgation of these *facts* and *truths* be "pernicious, destructive, and revolutionary," that they are so *pernicious*, *destructive*, and *revolutionary* only to that party organization whose aims and objects are by usurpations of power, and the suppression of truth, to overthrow the whole fabric of free government instituted by our ancestors, and to erect in its stead a consolidated, centralized Empire.

Yours, very respectfully,

ALEXANDER H. STEPHENS.

II.—REJOINDER OF THE "NEW ERA."

The Secession Revival.—Efforts to Resurrect and Revive Dead Issues. —Mr. Stephens' Letter.

Mr. Stephens, in the introduction to his work entitled "The War Between the States," declares the *object* of that book to be, "an inquiry into the nature of the Government of the United States, or the nature of the Union which exists between the States under the Constitution, with the causes, or conflict of principles, which led to a resort to arms." In his communication, which we cheerfully publish elsewhere, he disclaims any purpose "to set up, advance, or advocate any mere *theory* as to

the nature or character of the Federal Government under the Union of the States, as established by the Constitution."

Now, a *theory*, as everybody knows, is "an exposition of the general principles of any science," as the theory of government, for instance. It is a philosophical explanation of a phenomenon; and this phenomenon may be physical, as, for instance, the congelation of water into a hard, brittle substance called ice; or it may be moral, as for instance, the great moral phenomenon of the reformation of the sixteenth century; or the physical conflict witnessed in the United States in 1861. It is for the purpose of explaining this last-named phenomenon, that Mr. Stephens takes up his pen; and he succeeds in this explanation, to his own satisfaction, at least, upon the hypothesis that the Government of the United States, as formed by the Constitution of 1787, is not a Nation, not a "consolidated Union," as President Washington said it was, but merely a League or "Compact" between several sovereign and independent States or nations. Consequently, he assumes that, *because* the national Government took measures to enforce its authority as a Nation, it transcended its authority as a federative Agent of a plurality of nationalities, and was, therefore, in the wrong. Hence, according to Mr. Stephens' theory or exposition of the principles of our Government, the right of Secession still inheres with the people of any one of the States; and they may exercise this "right" at any time without, in any manner, violating the Constitution. This conclusion is legitimate, because Mr. Stephens' theory invests each State with "an equal right to judge for itself, as well of infractions, as of the mode and measure of redress!"

Such, in brief, is Mr. Stephens' "theory;" and upon such a theory, or, rather, shall we not say hypothesis, nothing is easier than to arrive at the conclusion that the present Government of the United States is "usurpational, unconstitutional, revolutionary, null, and void," because maintained by authority not granted in the original Constitution, or written agreement of the "Compact!" That is certainly the logical sequence of Mr. Stephens' theory, the legitimate conclusion from his premises, whether he so intended it or not. It is, therefore, not his con-

clusions *per se*, but rather the false and mischievous *premises*—the pernicious theory—from which his conclusions legitimately follow, that are objectionable in the argument of his book.

This theory of a federative Agency of independent Sovereign States, as established by the Constitution, was never heard of until some years after the adoption of that instrument by the people of the different States. It is a notorious fact that so long as the people of any State withheld their assent from the Federal Constitution, it was universally represented and reprobated by its adversaries as a scheme of "absolute and undisguised consolidation!" It expressly withdrew from the States, and invested in one sovereign head all power with regard to war, to treaties, and to diplomatic or commercial intercourse; and its opponents pointed to this fact as proof irresistible of the correctness of their position that it provided for an absolute and undisguised consolidation of the States into one General Government, a government having supreme authority, and therefore demanding the Ultimate Allegiance of the citizen. Its express inhibition of any alliance, compact, or treaty between two or more of the States, was to the minds of the anti-Federalists even more conclusive on this head; the very preamble to the instrument proclaimed it, as they said, the work of the PEOPLE of the United States, and not a mere Alliance or Compact between independent States, in their capacity of separate and distinct sovereignties.

Speaking of this very point, in opposition to the Government provided in the Constitution, Patrick Henry said: "That this is a consolidated Government is demonstrably clear; and the danger of such a government is to my mind very striking. . . . . If the States be not the agents of this compact, it must be one great, Consolidated, National Government of the people of the States. . . . I need not take much pains to show that the principles of this system, i. e., the system proposed by the Constitution, are extremely pernicious, impolitic, and dangerous."

The Constitution was, in the opinion of Mr. Henry, "pernicious, impolitic, and dangerous," *because* it provided, not for a league, a compact between the sovereign States; but because

it provided for a consolidated, Central Government of the People of the United States, a Government demanding the ultimate allegiance of the citizen even as against the State organization.

Nor did the advocates of the proposed system controvert the conclusions of its opponents on this point. On the contrary, they frankly admitted that the Constitution was the work of the people of the United States, as distinguished from the States in their primary and sovereign capacity. They did not hesitate to assert that the Government provided by this Constitution claimed the highest allegiance of the citizen. They even went beyond the objections urged by its opponents, and plainly told them that the Constitution left the States no reserved or undivided sovereignty whatever; and this was manifest in the fact that, by the Constitution, the States had expressly ceded the right to punish treason—not treason against their separate power, but treason against the United States; and treason being an offense against *sovereignty*, sovereignty must necessarily reside exclusively with the power competent to punish it. Even General Washington did not hesitate to assert that the end proposed by this Constitution was the "CONSOLIDATION of our Union;" and he never ceased to regard as of the highest importance and the greatest benefit, the fact that the Constitution which he lived to see adapted by the people of all the States, *did* provide for a "consolidated Union" or Government demanding the ultimate allegiance of the citizen, even as against the individual State. And history teaches no one thing more clearly than that it was the purpose of the framers of the Constitution, to render the inhabitants of all the States essentially and *permanently* ONE PEOPLE, living under a common Government, and recognized by a common National designation. This fact is fully demonstrated in the published debates and the writings between and by the advocates and opponents of the Constitution. Both parties were agreed as to the general scope, purport, and design of the instrument. There was no dispute *then* as to the truth of the proposition that it provided for a consolidated National Government of the PEOPLE of the United States, and *not* merely for a Confederation,

Alliance, or League between sovereign, independent, and separate States. One party advocated its adoption *because* it thus provided for a consolidated Government of the People, and it was for this identical reason that the other opposed it. This is a matter of history which we do not remember ever to have seen controverted; and when controverted, then will be time to quote authorities.

It was not until after the Constitution had been ratified, and therefore not until after this great Central Power or Nationality which they so much dreaded had been formed, that the opponents of the Constitution became—at least in profession—its most ardent admirers and vigilant guardians! They fell so much in love with what they termed a scheme of absolute Consolidation, that they actually became the champions of the Constitution as against those who had framed it and with difficulty achieved its ratification! In a few years thereafter, these same parties began to talk about "strict construction," the "reserved rights" to the States of all powers not expressly delegated to the General Government, and consequently of Federal usurpation! For, in 1798 we find the celebrated "Virginia and Kentucky Resolutions," the authorship of which was not openly avowed by Mr. Jefferson until nearly twenty years thereafter, and which constituted the corner-stone upon which Mr. Calhoun erected his Nullification heresies, as they are also the basis upon which Mr. Stephens erects his present defence of Secession! Three years after the date of these somewhat celebrated political theses, Mr. Jefferson became President of the United States; and the proposed purchase of Louisiana put his fidelity to the "strict construction" theory to the severest possible test. In the Constitution there was clearly no authority for the purchase unless found in that clause which provides for the "general welfare;" and this Mr. Jefferson had previously declared, in the set of Resolutions above referred to, was meant "to be subsidiary only to the execution of limited powers." There could be no power not "expressly" granted, said Mr. Jefferson; nevertheless he did recommend the purchase, thereby giving us to infer either that he knowingly violated the instrument whose provisions he had sworn to sup-

port; or else that he held his partisan thesis of "strict construction," and its concomitant crochets about the "reserved sovereignty of the States," in subordination to his higher sense of *duty* as head of the Nation!

In 1832, South Carolina threatened the exercise of this "reserved right" in the nullification of a law of Congress. Being, according to Mr. Stephens' theory, an independent power, in every thing except the prerogatives "expressly" delegated to the Federal "agency" or "compact," she undertook to fall back upon her "sovereignty" as an independent power, and declare a law of Congress a "usurpation, unconstitutional, revolutionary, null, and void"—just as Mr. Stephens and his echoes now say of the Constitutional amendments and the Reconstruction laws of the Government! Mr. Hayne, of South Carolina, as the representative of that theory, held that it was constitutional to interrupt the administration of the Constitution itself, in the hands of those who had been chosen to administer it, by the direct interference in the form of law, of the States, in virtue of their sovereign capacity. This threatened purpose to carry the theory of strict construction and State sovereignty to its legitimate sequence in the form of Nullification, was promptly met and put down by President Jackson, who declared that "It would be solecism to contend that any part of a nation may dissolve its connection with the other parts, to their injury or ruin, without committing any offence," to the constitution of its government. And yet, according to Mr. Stephens, South Carolina had the Constitutional right to do this very thing; because, according to his understanding of the Constitution, it made the State the sole judge as well of the infraction as of the mode and measure of redress!

When the next effort was made to reduce this pernicious theory to practice, Mr. Stephens opposed it, as he tells us, from considerations of policy; but he maintained, at the same time, as he intimates, that Georgia had the constitutional right to "break the sacred instrument" in order the better to preserve the "principles" upon which it was founded!

He made one of the most manly and truly eloquent appeals on record, against the proposition to secede; and he even went

so far as to say that to secede for such a cause, or upon such an occasion—the election of Mr. Lincoln to the Presidency—would be to break the Constitution, violate our plighted faith to the other States, and put ourselves clearly in the wrong. He claims, however, in the communication, which we publish this morning, that because he denied the rightful authority to secede for such a cause or upon such an occasion, he did not thereby assume that no State could rightfully exercise her sovereign power in withdrawing for any cause whatever. Now, since Mr. Stephens tells us that the object of his book is to show who was right and who was wrong in the recent physical conflict, it must follow, according to Mr. Stephens' own premises, that the secession leaders in the Democratic party were the culpable parties, since they *did* exercise a "right" which he himself had, only a few months previous, pronounced unjustifiable! It is true, Mr. Stephens, in the communication under notice, makes an ingenious special plea on this point—a plea that gives him more character as a sharp attorney than credit for philosophical statesmanship; but the query very naturally arises in the minds of plain men, Why did Mr. Stephens fail *then* to say that for *other then existing causes* than the mere election of Mr. Lincoln, the State might exercise the "right" of secession without violating the Constitution, and consequently without being in the wrong? If he ever said any thing of this kind until it became his task to justify the act of Secession, and harmonize his Union speech of November 14, 1860, with his course afterward, it has escaped our notice.

There is another point in Mr. Stephens' book, hinted at in his communication of this morning, which cannot escape the attention of the critical reader. Paramount authority or Sovereignty, according to the legitimate inferences from that book, rests with the People. This, we presume, no one questions; but, then, who are the People? Evidently they are the citizens of the United States, and not a majority in some individual State of the Union, comprising less than one-twentieth of the citizens of the United States. According to the genius of our Government, the People may, on the ground of the inalienable right of man, resist oppression; that is to say, they may right-

fully resist the government, or rather the adminstration of it, upon the ground of revolution. This right of revolution nobody denies; but the constitutional right of Secession, clearly implies that we have no Constitution of General Government, and, therefore, no Nation, but rather a diplomatic Agency of thirty-six independent States or nationalities, which may be broken up and destroyed any morning before breakfast, and for any cause or causes that a majority of the people one thirty-sixth of the Union may deem justifiable. And all this, according to Mr. Stephens' understanding of the nature of our Government, would be constitutional!

Now, Mr. Stephens may honestly believe all this, and it may have been his honest belief, as he says it has been, for more than thirty years; and yet that fact does not make his theory any the less destructive of the peace and order of society. And, in view of the dreadful experiences of the past, the people of Georgia cannot look with much favor upon any scheme, whether in the field of literature or upon the forum, looking to the resurrection and rehabilitation of a political party denying the nationality and sovereignty of the Government, and which holds Secession and nullification to be constitutional prerogatives, to be held in abeyance until such opportunities may arise as will unite *policy* with *principle* in the destruction of the Union!

III.—Mr. Stephens' Sur-rejoinder to the "New Era."

Liberty Hall,
Crawfordville, Georgia, *December* 2, 1870.

To the Editor of the New Era, Atlanta, Ga.:

Dear Sir:—I thank you for the publication of my letter of the 19th ultimo. In that, your readers, I feel quite assured, found proof sufficient to satisfy them that "Mr. Stephens of 1868 and 1870 does not reverse Mr. Stephens of 1860 and 1861." This point, therefore, may be considered settled, but one remark made by you editorially on this subject in the same issue, justifies, if it does not call for, a brief comment by me which I

trust you will allow me to make. The remark to which I allude is in these words:

"It is true, Mr. Stephens, in the communication under notice, makes an ingenious special plea on this point—a plea that gives him more character as a sharp attorney than credit for philosophical statesmanship; but the query very naturally rises in the minds of plain men, Why did Mr. Stephens fail *then* to say that for *other then existing causes* than the mere election of Mr. Lincoln, the State might exercise the 'right' of secession without violating the Constitution, and consequently without being in the wrong? If he ever said any thing of this kind until it became his task to justify the act of Secession, and harmonize his Union speech of November 14, 1860, with his course afterward, it has escaped our notice."

To this I wish merely to say that the extracts furnished in the communication, to which you refer, were taken from the same speech from which you quoted in your issues of the 11th and 16th ultimo. If they *escaped* your notice, either when the speech was made, or when you were quoting from it, it shows much more clearly, you will allow me most respectfully to say, that you are a careless reader, than that I, in their reproduction, exhibited, in any way, the character of a bare "sharp attorney." These *very extracts* were part and parcel of the *same speech*, which you are pleased to characterize as very "statesmanlike;" and went with it broadcast over the United States.

As to what else you say in your two columns' comments on my communication of the 19th ultimo, I have also some remarks to submit to your consideration and that of your readers, for which I shall solicit your indulgence.

In no part of these comments do you directly assail any of the facts touching the history of the Federal Government set forth in the "two volumes" referred to, which you seem to think have been arrayed with a view to establish a theory quite destructive, in your opinion, of the "peace of society;" but you do indulge at considerable length in round statements, which are entirely inconsistent with these facts.

Among other things you say:

"This theory of a federative Agency of independent Sovereign States, as established by the Constitution, was never heard of until some years after the adoption of that instrument by the people of the different States.

It is a notorious fact that so long as the people of any State withheld their assent from the Federal Constitution, it was universally represented and reprobated by its adversaries as a scheme of 'absolute and undisguised consolidation!' It expressly withdrew from the States, and invested in one sovereign head, all power with regard to war, to treaties, and to diplomatic or commercial intercourse; and its opponents pointed to this fact as proof irresistible of the correctness of their position that it provided for an absolute and undisguised consolidation of the States into one General Government, a government having unlimited authority, and therefore demanding the Ultimate Allegiance of the citizen. Its express inhibition of any alliance, compact, or treaty between two or more of the States was to the minds of the anti-Federalists even more conclusive on this head: the very preamble to the instrument proclaimed it, as they said, the work of the PEOPLE of the United States, and not a mere Alliance or Compact between independent States, in their capacity of separate and distinct sovereignties.

"Speaking of this very point, in opposition to the Government provided in the Constitution, Patrick Henry said: 'That this is a consolidated Government is demonstrably clear; and the danger of such a government is to my mind very striking. . . . If the States be not the Agents of this compact, it must be one great Consolidated, National Government of the people of the States. . . . I need not take much pains to show that the principles of this system, i. e., the system proposed by the Constitution, are extremely pernicious, impolitic, and dangerous.'

"The Constitution was, in the opinion of Mr. Henry, 'pernicious, impolitic, and dangerous,' *because* it provided, not for a league, a compact between the sovereign States; but because it provided for a consolidated, Central Government of the People of the United States, a Government demanding the ultimate allegiance of the citizen even as against the State organization.

"Nor did the advocates of the proposed system controvert the conclusions of its opponents on this point. On the contrary, they frankly admitted that the Constitution was the work of the people of the United States, as distinguished from the States in their primary and sovereign capacity. They did not hesitate to assert that the Government provided by this Constitution claimed the highest allegiance of the citizen. They even went beyond the objections urged by its opponents, and plainly told them that the Constitution left the States no reserved or undivided sovereignty whatever; and that this was manifest in the fact that, by the Constitution, the States had expressly ceded the right to punish treason—not treason against their separate power, but treason against the United States; and treason being an offence against *sovereignty*, sovereignty must necessarily reside exclusively with the power competent to punish it. Even General Washington did not hesitate to assert that the end proposed

by this Constitution was the 'CONSOLIDATION of our Union;' and he never ceased to regard as of the highest importance, and the greatest benefit, the fact that the Constitution which he lived to see adopted by the people of all the States, *did* provide for a 'consolidated Union' Government demanding the ultimate allegiance of the citizen even as against the individual State. And history teaches no one thing more clearly than that it was the purpose of the framers of the Constitution to render the inhabitants of all the States essentially and *permanently* ONE PEOPLE, living under a common Government, and recognized by a common National designation. This fact is fully demonstrated in the published debates and the writings between and by the advocates and opponents of the Constitution. Both parties were agreed as to the general scope, purport, and design of the instrument. There was no dispute *then* as to the truth of the proposition that it provided for a consolidated, National Government of the PEOPLE of the United States, and *not* merely for a Confederation, Alliance, or League between sovereign independent and separate States. One party advocated its adoption *because* it thus provided for a consolidated Government of the People, and it was for this identical reason that the other opposed it. This is a matter of history which we do not remember ever to have seen controverted; and when controverted, then will be time to quote authorities."

Now, allow me to say that truth is seldom arrived at in any department of knowledge, either by rambling discourse or wrangling disputation. I have no taste for either. In order, therefore, that we may come to a definite understanding upon points and issues of *fact* on which the *truth* of our history rests, as to the real nature and character of the Government of the United States, let me ask:

1st. Have you examined or "noticed" the documentary evidence adduced on page 48, *et sequens*, 1st vol. of the "War Between the States," to prove the fact that the words, "*consolidation of the Union*," used in the letter of the Convention that framed the Constitution, addressed to the Congress of States then in session (which you attribute to General Washington, as thousands of others have erroneously done, but which was barely signed by him officially as President of the Convention), were *not intended*, by those who prepared that letter, to convey the idea that the "Federal system" of the then existing Union of the States was to be done away with by the adoption of the new Constitution proposed; but that the meaning of these words in their connection was only to *strengthen* the then exist-

ing Federal Union of the States? If so, do you assail its authenticity or deny its sufficiency?

2d. Have you examined or "noticed" the record adduced on page 238, vol. 1st, from which it appears, that when Mr. Shurtliff in the Massachusetts' ratifying Convention, called attention especially to this point, and remarked (referring to the Convention which framed the Constitution, and the *very words* quoted by you), "The Convention says they aimed at a consolidation of the Union," he was told by distinguished leaders in that body, who favored the ratification, "The distinction is between the consolidation of the *States* and a consolidation of the *Union*." "The word *consolidation* has different ideas—as different metals melted into one mass—two twigs tied into one bundle." "The Senators will represent the *sovereignty* of the States, the Representatives are to represent the people."

If so, do you assail the authenticity of the record, or deny its sufficiency to prove that the advocates of the Constitution in the Massachusetts Convention did *not* claim for it that *consolidation of the whole people* of the United States into *one body politic*, and a surrender of the sovereignty of the several States which you maintain they did?

3d. Have you examined or "noticed" the record adduced on page 214, 1st vol., which shows that Mr. Wilson, in the Ratifying Convention of Pennsylvania, who had been one of the most active members in the convention which framed the Constitution, and one of its most ardent advocates and supporters, said, that the plan proposed for the government of the United States was a "Confederate Republic," and that (page 222) so far from its being "a consolidated Government" (in the sense you speak of), "*it was not treated with decency when such insinuations are offered against it?*" If so, do you assail either the competency or sufficiency of the proof there adduced, to utterly demolish your assertions as to the position of the friends and advocates of the Constitution everywhere, when it was before the State Convention for adoption?

4th. Have you examined or "noticed" the evidence adduced, page 277, *et sequens*, 1st vol., which shows that every supporter of the Constitution in the Ratifying Convention of

the State of New York, held and maintained, that the plan of Government proposed by the Constitution was a "Confederated Republic," and that even Alexander Hamilton, in that Convention, on the point of "*consolidation*," said (page 283, 1st vol.), "The States can never lose their powers till the whole people of America are robbed of their liberties. These must go together; they must support each other, or meet one common fate?" If so, do you assail the authenticity of the proof, or deny its sufficiency to establish the fact, that no advocate or friend of the Constitution in the New York Convention claimed for it a surrender of the sovereignty of the several States as you maintain they did?

5th. Have you examined or "noticed" the proofs adduced on page 156, *et sequens*, 1st vol., to show the fact that Washington himself, who had officially signed the letter prepared by the Convention that framed the Constitution, in which occur the words quoted by you about a "consolidation of the Union" after that letter had been published and discussed, and while the Constitution was under consideration for adoption or rejection, by a sufficient number of States to make it "*binding between*" those which should ratify it, in speaking of the nature of the Government which would be established by it, styled it "a new Confederacy," "new Federal system," and a "Confederated Government;" and that, in a message to the Senate after ten States had ratified it, and the Government had gone into operation under it, he styled it a "Confederated Republic?"

If so, do you assail the validity of the proofs, or maintain that the views of Washington, as expressed in these proofs, are at all consistent with yours, touching a "consolidation of the Union," and a general merger of the sovereignty of the several States into one absolute, supreme, central head?

6th. Have you examined or "noticed" the evidence adduced on page 163, *et sequens*, 1st vol., which shows conclusively, if true, that *every advocate* of the ratification of the Constitution in all the States, from Georgia to New Hampshire, supported it *avowedly*, upon the universal understanding, that the Government to be established by it was *not* a consolidation of all the people of all the States into one central Government

—claiming their allegiance—but that it was to be a "Federal," or "Confederated," union of the States?

If so, do you assail its validity, or deny its conclusiveness?

7th. Have you examined or "noticed" the proofs on page 167, *et sequens*, 1st vol., of the well-known meaning of the words "Federal," "Federate," and "Confederate," in that day; as given by Dr. Samuel Johnson, in his standard Dictionary of the English Language—showing that each and all of these words are derived from the Latin word *Foedus*, which means covenant or compact; and that "*Federal*" meant "*relating to a League or Contract*," and that "*Federate*" meant "*leagued, joined in a Confederacy?*"

If so, do you gainsay the proof or deny the use and force of its application?

8th. Have you examined or "noticed" the proofs adduced on the same page, which shows that Dr. Noah Webster, the great American lexicographer, who took an active part in the formation of the present Constitution, says, in his Dictionary, of this word "Federal," that it is derived from the Latin word "*foedus*," which means "*a league*"—that the word "*league*" he defines to be "*an Alliance or Confederacy* between Princes or *States* for their mutual aid or defense," and that, in defining the meaning of the word "*Federal*," he used this language: "*Consisting in a compact between States;* founded on alliance by contract or mutual agreement, as a Federal Government, such as that of the United States?"

If so, do you gainsay the proof or deny the proper use and force of its application?

It is true that after the late war was begun and the "peace of society" was disturbed by it—in 1864—certain editors, in publishing a new edition of this great Dictionary, after the death of the distinguished author, did most unjustifiably, if not sacrilegiously, expunge from it this definition, as they did the author's definition of several other words relating to the nature and character of the Government of the United States, such as "compact," "Congress," "Confederation," "Constitution," etc. But do you assail either the authenticity of the proofs adduced, or their conclusiveness in establishing the fact, that the

universally received sense and meaning of the words at the time, were as defined by Dr. Johnson and Dr. Webster? If you cannot assail or deny either, is not the conclusion irresistible, that the universal opinion of the friends of the Constitution when *it was adopted*, was, that the Union of the States under it was "a Federal Union"—a Union founded upon compact between separate States for their mutual aid and defence; and that the Government established by it was, indeed, as Washington styled it, a "Confederated Republic?"

9th. Have you examined or "noticed" the authorities of Montesquieu and Vattel, adduced on pages 169 and 170, 1st vol., as to the nature and character of a "Confederate Republic," or "Federal Union;" and from which it clearly appears, that, in all such cases, the sovereignty of each member of the Union or Confederacy is necessarily retained by the States severally—that "voluntary restraints" may be put upon its exercise, as in all other cases of compact between States; but that in no such case is ultimate sovereignty parted with by any State, upon entering into a Union of this character? If so, do you gainsay the genuineness of the authority cited, or deny the extent of the use or application made of them?

10th. Have you examined or "noticed" the evidence adduced on pages 162, *et sequens*, and 257, *et sequens*, 1st vol., showing how Patrick Henry (who did oppose the adoption of the Constitution in the Virginia Convention, from fears that the character which you and other Centralists now claim for the Government under it, would be imparted to it by construction, and that Public Liberty would thereby be ultimately lost) was answered by Pendleton, the President of the Convention, by Lee, Nicholas, Marshall, and Madison, to say nothing of others?

If so, do you deny that it does conclusively show that *no one* of them *agreed* with Patrick Henry in the sentiments expressed by him, and quoted by you? Does not the evidence show beyond the possibility of a doubt that *every one* of these friends and advocates of the Constitution in the Virginia Ratifying Convention maintained that Patrick Henry's position was wrong—that his views were entirely erroneous—that his apprehensions were utterly groundless; and that the Government to

be established would be *Federal* in its character—founded upon a compact between the States—delegating certain specially enumerated powers which could be resumed if abused; and *not* such a "consolidated Government" as he apprehended it would be *construed to be?*

11th. Does not the proof show that *every advocate* of the Constitution in the Convention of Virginia as in that of Massachusetts, of Pennsylvania, of New York, and of every other State, supported it as a *Federal Constitution?* Did not Madison, in reply to these very remarks quoted by you of Patrick Henry, say: "Who are the parties to it? The People; but not the People as composing one great body; but the People as composing *thirteen sovereignties?*"

If so, how do you say that "this *theory* (if you please, or this *fact*, as I should rather say), of a Federative Agency of independent sovereign States, as established by the Constitution, was never heard of until some years after the adoption of that Instrument by the people of the different States?"

12th. Have you examined or "noticed" the proof adduced on page 475, 1st vol., showing the views of General Jackson upon this identical question? Upon the authority of this distinguished hero and statesman you rely concerning another matter alluded to in your article. But have you examined or noticed what he said of the nature of the General Government, and the *sovereignty* of the several States, in his farewell address, wherein, among many other of the same sort, these most pertinent and potent words occur: (Italics mine.)

"From the extent of our country, its diversified interests, different pursuits, and different habits, it is too obvious for argument, that a *single consolidated* Government would be wholly inadequate to watch over and protect its interests, and *every friend of our Free Institutions* should be *always* prepared to maintain, *unimpaired* and *in full vigor*, the *rights* and *sovereignty of the States*, and to confine the action of the General Government strictly to the sphere of its appropriate duties?"

If so, do you deny the authenticity of the proof adduced? And if not, must you not admit that even General Jackson, though opposed as he was to the doctrine of nullification, yet

maintained the great truth in our history of the sovereignty of the States?

Without extending the number of these points or *issues of fact* on which rests the truth of history, allow me now barely to add that if you have examined and noticed these proofs, to say nothing of others, then I do not understand how you came to say in your comments referred to, in speaking of the Constitution and the nature of the Government established by it, that "one party advocated its adoption *because* it thus provided for a consolidated Government of the People, and it was for this identical reason that the other opposed it. This is matter of history which we do not remember ever to have seen controverted, and when controverted, then will be time to quote authorities."

Now, do not these few proofs here referred to, taken from many adduced in the two volumes, plainly show that the Constitution was adopted because it was *not* the "consolidated Government" which you claim it to be, but *was* just the "Federal" or "Confederated Republic" which it is shown to be in the "two volumes," and that an overwhelming majority of all parties, at the time, if they had regarded it as the thing you now represent it to be, would have united in its utter repudiation?

Then, again, if you have *not* examined or noticed these proofs, it seems to me most of your intelligent readers will come to the very proper conclusion that you would do well to study more closely the contents of a book before undertaking to pronounce its teachings either *pernicious, dangerous, or revolutionary!*

Was it, however, allow me also to ask you, "a *pernicious, dangerous, and revolutionary*" truth to utter, when Washington proclaimed that the Government of the United States was a "Confederacy," or "Confederated Republic?"

If not, is it more pernicious, dangerous, or revolutionary to promulgate the same truth *now* than it was *then?*

Was it either *pernicious, dangerous,* or *revolutionary* for General Jackson to assert the fact of the sovereignty of the States under the Constitution; and urge its maintenance in the

most earnest manner? If not, is it more *pernicious*, *dangerous*, or *revolutionary* to promulgate the same truth, and for the *same reasons*, *now* than it was *then?* Are not the perils of "a single Consolidated Government"—a Central Despotism—as great *now* as they were *then?* Is there any thing in the "two volumes" more pernicious, dangerous, or revolutionary, on this subject, than General Jackson's own solemn warning, that "*every friend of our Free Institutions should be always prepared to maintain unimpaired and in full vigor the rights and sovereignty of the States; and to confine the action of the General Government strictly to the sphere of its appropriate duties?*"

Away, my dear sir, with the chimera of "Secession Revived!" Give yourself no uneasiness from any teachings of mine on that score. The *right* of a mode of redressing grievances or wrongs of any sort, and the *policy* of it, are very different questions, and present very different considerations. Secession, as a mode of redress of grievances or breaches of the Compact between the States, has been abandoned, in good faith, and I doubt not forever? That is, indeed, a *dead issue!* But the indestructible *right* upon which it rested can and will never die. It was abandoned, not because of the want of *right*, but because of its *impolicy* in attaining the object aimed at, by its advocates as the surest and safest mode of escape from the usurpations of Power. In the 2d of the "two volumes" you refer to, on pages 530–31, you will see, if you read closely, that in my judgment, one of its greatest errors *in policy*, at the time it was resorted to, consisted in "the separation which it necessarily produced between the real friends of the principles of the Constitution, North and South, in a common contest between them and the Centralists. It was, in truth, a great battle—the Political Armageddon of America—in which there should have been a concentration of forces, instead of that dispersion which of necessity resulted from secession."

This Political Armageddon of America is yet to be decided—not on battle-fields, but in the Forum, on the Hustings, by the Press, and at the Polls! The contest is now waging, and in it is involved the greatest *living issue* at present before the

people of every State and Section, and the greatest that will be before them for years to come. It is the issue, on one side, of Consolidation—Centralism—Empire; and, on the other the Sovereign Right of Local Self-government by the Peoples of the several States of this Continent.

To achieve the victory of this contest the friends of our Free Institutions in every State of our Federal Union, from Maine to California, from the Gulfs to the Lakes, must make common cause. Joint efforts are necessary for separate success. As their common ancestors united in 1776 under lead of Washington to establish this great right, and then again in 1800, under Jefferson to save it, when imperiled; so now they must unite in patriotic action for its rescue and perpetuation. For success in the struggle they will need no weapons but the truths of history—the teachings of the Fathers—and the parting admonitions of Jackson.

Yours, most respectfully,

ALEXANDER H. STEPHENS.

APPENDIX.

[The following articles, in Review of the "Reconstruction Measures" of Congress, being entirely *germain* to the subjects discussed in this volume, and covering important points not therein embraced, are deemed by the author as very fit material for a very appropriate Appendix to the foregoing Supplement to the "Constitutional View of the War between the States; its Causes, Character, Conduct, and *Results*."

In reference to these appended articles, it need only be stated that the two speeches were by Hon. Linton Stephens under the following circumstances:

The first was delivered in the city of Macon, Georgia, on the 23d of January, 1871, in his own defence, before a Federal Commissioner, against a criminal charge founded upon an alleged violation of the "Enforcement Act" of 1870. The final result of the case was an abandonment of the prosecution by the Government.

The second was addressed to a public audience in the city of Augusta, Georgia, on the 18th of February, 1871.

The letter of Ex-Governor Jenkins to Governor Smith (who now occupies the Gubernatorial Chair of Georgia) requires no explanation. This restoration of the Seal of the Executive Department of the State, which has been heroically saved from the hands of usurpers, has its historical parallel in the restoration of their "old charter" to the people of Connecticut, in 1688, after its safe preservation for some time in the "old oak" during the *repression* of their rightful Government by the infamous Andros and his military bands.]

I.

SPEECH OF HON. LINTON STEPHENS, IN MACON, GEORGIA, ON THE "RECONSTRUCTION MEASURES," AND THE "ENFORCEMENT ACT" OF 1870, DELIVERED 23D OF JANUARY, 1871.

May it please the Court: I know full well that, if your Honor is not superior to the average of poor human nature, you will find it difficult, if not impossible, to give my defence in this case an impartial consideration, and an honest decision. The prosecution against me is founded on the course which I took in the recent political election, which resulted in a victory for my party, and a defeat for yours. It is also directly in the line of an assault which was lately made against me in the newspapers, by the official head of your party in this State. I, therefore, recognize in this case a *political prosecution*, just as distinctly as I recognize in my judge a most zealous and determined political opponent. Yet, sir, there are other considerations which encourage me to hope that I may obtain, even from *you*, that decision which is demanded by justice and by the laws. From the personal knowledge of you, which I have acquired since the beginning of this trial, I have discovered that you are a man of decided intelligence; and I am told that you are a man of courage. I am also told that you, yourself, have been, in some instances, a victim of political persecution, and an object of unjust obloquy. Surely, such a man, with such an experience, *ought* to give a fair hearing to one whose only fault is *not* any wrong which he has committed against the laws, but the damage which he has inflicted upon a political party. My *greatest* encouragement, however, is derived from my confidence in the lawfulness of my conduct, and the power of truth. To truth, bravely upheld, belongs a triumph which cannot be defeated, nor long delayed, not even by the intensest prejudices of partisan strife. I am strengthened, too, in the advocacy of truth on this occasion by the consciousness that, in defending myself, I shall be but defending principles which are dear to every American, because they lie at the foundation of the

whole fabric of American constitutional liberty. Nor, sir, unless I am much mistaken in the estimate which I have formed of your character, will you listen to my defence any the less favorably because of the frankness and boldness with which I shall present it.

I am accused under the Enforcement Act of Congress.

My first position is, that this whole act is not a law, but a mere legal nullity.

It was passed with the professed object of carrying into effect what are called the Fourteenth and Fifteenth Amendments of the Constitution of the United States, and depends on their validity for its own.

These so-called Amendments are, as I shall now proceed to show, not *true* Amendments of the Constitution, and do not form any part of that sacred instrument. They are nothing but usurpations and nullities, having no validity themselves, and therefore incapable of imparting any to the Enforcement Act, or to any other act whatsoever.

I take occasion to say, that I regard the Thirteenth Amendment, abolishing slavery, as clearly distinguishable from the Fourteenth and Fifteenth so-called Amendments, in the manner both of its proposal and of its ratification. The contrast between it and them will contribute to make their invalidity all the more apparent. It is true, that when the Thirteenth Amendment was proposed, ten States of the Union were absent from Congress; but their absence was *voluntary*, and therefore did not affect the validity of the proposal. It is true, also, that the Legislatures which ratified it for these ten States had their initiation in a palpable usurpation of power on the part of the President of the United States; yet it is also unquestionably true, that they were elected and sustained by overwhelming majorities of the true constitutional constituencies of the States for which they acted; they rested on the consent of the people, or constitutional constituencies of the States, and were therefore truly "Legislatures of the States." This Amendment was ratified by these Legislatures of the States in good faith, and in conformity with the almost unanimous wish of the constitutional "Peoples."

How different is the case of the Fourteenth and Fifteenth so-called Amendments! If these are parts of the Constitution, I ask how did they become so? Were they proposed by Congress in a constitutional manner?

In framing and proposing them every State in the Union was entitled, by the express terms of the Constitution, to be represented in speech and vote by "two Senators" and "at least one Representative." But ten States of the Union were absent. This time their absence was not voluntary but compelled.—When they were claiming a hearing through their constitutional representatives they were driven away, and denied all participation in framing and proposing these so-called Amendments! Was this a constitutional mode of proposal? I say, it was an unconstitutional mode, and that the proposal was, *ab initio*, null and void.

But how stands the *ratification* of these so-called Amendments? To say nothing about the duress of bayonets and Congressional dictation, under which the ratification was forced through the ratifying bodies in the ten Southern States, the great question is, who were these ratifying bodies? Were they Legislatures of the States? They were *not*. They were the creatures of notorious and avowed Congressional usurpation. They were elected, not by the constitutional constituencies of the States, but by constituencies created by Congress, not only outside of the Constitution, but in palpable violation of one of its express provisions. The suffrage or political power of the States is not delegated to the General Government by the Constitution; but on the contrary, its reservation by the States is rendered exceedingly emphatic by that provision of the Constitution which, instead of creating a constituency to elect its own officers—President, Vice-President, and members of Congress—adopts the constituencies of the States, as regulated by the States themselves, for the election of the most numerous branch of their own Legislatures.

Ten of the ratifications, which were falsely counted in favor of these miscalled Amendments as ratifications by Legislatures of States, were only ratifications by bodies which had their origin in Congressional usurpation, were elected by illegal con-

stituencies unknown to the Constitution of the United States or the Constitutions of the States, and were organized and manipulated under the control of military commanders who claimed and exercised the jurisdiction of passing upon the election and qualification of their members. Can these joint products of usurpation, fraud, and force be palmed off as Legislatures of States? Can ratifications by them be accepted as ratifications by Legislatures of States? Can falsehood thus be converted into truth by the thimble-rigging of Presidential proclamations? These bodies were, indeed, set up by their usurping creators, as Legislatures *for* and *over* States; but until the known truth of recent history can be blotted out by the mere power of shameless assertion, they cannot be recognized as Legislatures of States. The Parliament of Great Britain is a Legislature *for* and *over* poor, down-trodden Ireland; but what Irishman will ever recognize it as the Legislature of Ireland!

The false, spurious, and revolutionary character of these ratifying bodies is rendered still more glaring by the fact that, supported by the bayonet, they subverted, or rather repressed, the true, legitimate Legislatures of all the States where reconstruction was applied. That such Legislatures existed in these States, and are indeed still existing, is demonstrable from the facts viewed in the light of either of the two theories of secession—that of its validity or invalidity. On either theory the seceding States remained *States*. On the one theory they were States out of the Union; on the other, they have remained all the while States in the Union. The Supreme Court of the United States, in the recent case of White *vs.* Texas, speaking through Mr. Chief Justice Chase, held that secession was invalid, and that the States which had attempted it remained and still are *States in the Union*.

A State is not a disorganized mass of people. It is an organized political body. It must have a Constitution of some sort, written or traditional. Being an organized body, it must have a law of organization or composition or Constitution, defining the depositary of its political power. Where there is no such constitutional or constituting or organizing or fundamental law, there can be no organization—no *State*. These ten

States, then, which seceded or attempted to secede (as the one theory or the other may be held), have all the while had *Constitutions*. In point of fact, each of these has ever been a written Constitution, giving the ballot to defined classes of citizens who are known as the constitutional constituency of the State. This constitutional constituency is entrusted by each of these Constitutions with power over the Constitution itself, in modifying or changing it, and of course in modifying or changing the organization or composition of the constitutional constituency. This constitutional constituency is the depositary of the highest political power of the State. Any change made in the Constitution or organization of the State, or in the composition of the constitutional constituency, as it may exist at any time, without the concurrent action of the constitutional constituency itself, is *revolution*. It is disorganization. It is the subversion or suppression (as it may prove permanent or temporary) of one organization, and the substitution of another. It is the abolition (permanent or temporary) of the old State, and the introduction of a new one.

Each of these ten States, in 1865, at the close of the war, being then a *State*, had a Constitution and a constitutional constituency linked back by unbroken succession to the Constitution and constitutional constituency as they existed before secession. Secession made no break in the chain. The provision which was put in the Constitution at the time of secession, connecting the State with the Confederate States instead of with the United States as its Federal head, is wholly immaterial to the present purpose. On the one theory it was simply void, and left the organization of the *State*, the Constitution, and the constitutional constituency *intact*. On the other theory, being valid, it modified but did not impair the integrity of the State organization. All this follows from, or rather is comprehended in, the one proposition that these ten States have never lost their character as *States*.

Each of these ten States being a State at the close of the war in 1865, stands now *de jure* just as it stood then; unless it has since that time been changed by the action of its constitutional constituency. I think each of them *was* so changed in the lat-

ter part of that same year. In each of them a Convention was elected by a large and unquestionable majority of the constitutional constituency (although a portion of them were excluded from voting) for the purpose of modifying the Constitution. These Conventions repealed the ordinance of secession, abolished slavery, and made some other changes in the several Constitutions, but (in most of the States) left the constitutional constituencies just as they stood before. In conformity with the Constitutions, as last modified by those Conventions, each of the States was speedily provided with a complete government, consisting of a legislative, executive, and judicial department. It was by the Legislatures thus formed that the Thirteenth Amendment to the Constitution of the United States, abolishing slavery, was ratified.

Since that time no change has been made in the organization of any of these States, with the coöperation or concurrence of the constitutional constituencies. Only very small minorities of the constitutional constituencies have coöperated in the work of reconstruction. It is a notorious and unquestionable fact, that an overwhelming majority of them in each of the States have been steadily and unswervingly opposed to it, and have voted against it, whenever they have voted at all.

The clear result, in my judgment, is that each of these States now stands *de jure* just as she was left by the action of her Convention in 1865, with a complete government, formed under the Constitution of that year, including a Legislature which still constitutionally exists, and is capable of assembling any day, if it were only allowed to do so by the withdrawal of the bayonet. But she stands *de facto suppressed*, by a government originated and imposed on her by an external power, and supported alone by the bayonet. Such a government is the embodiment of anti-republicanism and despotism. Under just such a government Ireland is writhing and Poland is crushed.

Is it not now demonstrated that the bodies which ratified the so-called Fourteenth and Fifteenth Amendments, in the name of these ten States, were the revolutionary products of external force and fraud, displacing the *true Legislatures* which alone could have given a constitutional ratification?

These so-called amendments, then, have been neither constitutionally proposed nor constitutionally ratified. How can they form parts of the Constitution?

A successful answer to this question would long ago have brought that peace and harmony which can never come from might overbearing right. Instead of giving such an answer, the authors of these measures have sought to drown reason and argument in clamorous charges of violence and revolution against the victims, not the perpetrators, of those crimes.

But an answer has at last been attempted from an unexpected quarter. Strangely enough, it comes from one who has greatly distinguished himself by the vigor and ability with which he has denounced the whole scheme of reconstruction as a revolutionary usurpation and nullity. And, still more strangely, he adheres to that denunciation, while now arguing that these so-called amendments, the creatures and culminating points of that reconstruction scheme, are valid parts of the Constitution. Such a conclusion from such a beginning! And yet he is hailed by his new allies as a very Daniel come unto judgment. They were in a sore strait for an *argument*.

He says these so-called amendments have become parts of the Constitution, because they have been proclaimed as such, by the power which, under the Constitution, has the "jurisdiction" to proclaim amendments.

There has been much said, sir, about issues that are "dead;" surely here is one that is not only alive but *very lively*. Let Americans hear and mark it! The Constitution of the United States can be changed, can be subverted by Presidential proclamation!! I once knew a man whose motto was that a lie, well told, was better than the truth, because, he said, truth was a stubborn, unmanageable thing, but a lie in the hands of a genius could be fitted exactly to the exigencies of the case. But even he admitted that the lie must be *well told*, or it would not serve. If it should *appear* to be a lie, it would be turned from a thing of power into a thing for contempt. There has been progress, sir, since that man taught. It is now discovered that a *known, proven* lie is as good as the truth, provided it can only get "proclaimed" by a power hav-

ing "jurisdiction" to proclaim it!! I, sir, know of no power —either on the earth, or above it, or under it—that has "jurisdiction" to "proclaim" LIES!! Nay, sir, I know of no power which has jurisdiction to proclaim amendments to the Constitution. According to my reading of that instrument, amendments constitutionally proposed "shall be valid to all intents and purposes as part of the Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress." The ratification by three-fourths of the *States*, acting through their Legislatures or their Conventions, sets the seal of validity on the amendment and makes it a part of the Constitution. Nothing else can do it. It must be a *true* ratification, by a *true* Legislature, or a *true* Convention of the State. A false ratification by a true Legislature of the State will not do. A true ratification by a spurious Legislature will not do. The validity of the amendment, and its authority as a part of the Constitution, are made to depend upon the *historic truth* of its ratification as required by the Constitution. Proclamations of falsehoods from Presidents, or from anybody else, have nothing to do with the subject. This is plain doctrine, drawn from the Constitution itself. The validity of the Constitution in all its parts depends upon the facts of their history.

But, according to this new discovery, the President of the United States can subvert the whole Constitution, and make himself a legal and valid autocrat, by simply "proclaiming" that an amendment to the Constitution to that effect has been proposed by two-thirds of each house of Congress, and ratified by the Legislatures of three-fourths of the States; although it may be known of all men that there is not one word of truth in the proclamation. The President of the United States can legally convert himself into an autocrat by his own proclamation. Theories are quickly put into practice in these days. Let the country beware!!

We are also told by this new Daniel, not only that the usurpation has become obligatory by its success, but there is no hope of getting rid of it: for he says it cannot be changed with-

out another amendment, ratified by three-fourths of the States, and that there is no prospect of getting these three-fourths. Wonderful! Why, he himself has taught us that the whole thing may be accomplished by a Presidential proclamation. We have only to elect a Democratic President, and let him "proclaim" that a new amendment, abolishing the Fourteenth and Fifteenth, has been duly proposed and duly ratified; and the thing is done. That, sir, would be the way taught by this new light; but it would never be my way. I do not propose to walk in the ways of falsehood. I prefer truth; because it is nobler, grander. I believe also that, when it is supported by true and bold men, it is always more powerful. My way would be to elect a Democratic President; and let him treat the usurpation as a usurpation and a nullity; and let him withdraw the bayonet, and "proclaim" that the revolutionary governments in these ten States would not be supported by him, but that the constitutional Republican Governments which now exist here would be left free to rise from their state of forcible repression, and do their natural and legitimate work of true restoration, real peace, sincere and cordial fraternity. The whole problem is solved by the simple withdrawal of the bayonet.

I have now shown that the Fourteenth and Fifteenth Amendments do not form any part of the Constitution; and thus have made good my first position, that the whole Enforcement Act, which depends solely upon them for its validity, is not a law, but a mere legal nullity.

My second position is that, even if the so-called Fourteenth and Fifteenth Amendments were valid, yet all those parts of the Enforcement Act claimed as applicable to my case are utterly "outside" of them, and (being confessedly outside of the Constitution, apart from them) are unconstitutional, and not binding as *law*.

The Fourteenth Amendment, and the small part of the Enforcement Act relating to it, have no relevancy to this prosecution, and I shall say nothing further about them.

Those parts of the Act claimed as applicable to my case, rest solely upon the Fifteenth for their validity; and, in order to

see whether they are outside of it or not, it becomes necessary to know what are the terms and extent of that Amendment.

The effect of its terms is strangely misapprehended. It seems to be regarded as a thing which, by its terms, secures the right of suffrage to the negro, and empowers Congress to enforce that right. This is a total and most dangerous mistake. Here is the Amendment. It is not longer than the first joint of my little finger:

"SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation."

This is the whole of it. Now, sir, I defy refutation, when I affirm that, by these terms, the right of suffrage is not conferred upon, nor secured to, any person or class of persons whomsoever. The whole is simply a prohibition on the United States, and the several States. The United States, in legislating for the District of Columbia or a Territory, and the several States in regulating their suffrage, each for herself, are prohibited from denying it to anybody, or abridging its exercise on either one of the three grounds—race, color, or previous condition of servitude—but are left perfectly free to abridge it or deny it on any *other* ground whatsoever—sex, female or male, ignorance or intelligence, poverty or wealth, crime or virtue, or any other of an innumerable multitude of *other* grounds. In point of fact, the right is denied, both by the United States and by each one of the several States, on many of these *other* grounds, and the denial is enforced under heavy penalties, not only by the laws of the States, but by this very Enforcement Act itself. To say that the right is conferred on or secured to anybody, because it cannot be denied for any one or all of three reasons out of an indefinite number of possible and usual reasons, is simply absurd. As well say that a plat of ground is fenced or secured from intrusion by putting a wall on one of its many sides, leaving all the *other* sides perfectly open. A right is not conferred or secured by a law, when it can be denied without a violation of that law.

This brings me to the crucial test of my second position. Whether I have violated any provisions of the Enforcement Act or not, it is at least certain that I have *not* violated the Fifteenth Amendment. It is affirmatively proven, by the testimony of the two prosecutors in this case—the two negro managers of election—that I did not object to, or in any manner interfere with, any vote on the ground of either race, color, or previous condition of servitude. It is manifest, then, that if I have violated any part or parts of the Enforcement Act, such part or parts are "outside" of the Amendment, and unauthorized by it, since I have *not* violated the Amendment itself. I have not violated the Amendmant, even if its prohibition reached private citizens, instead of being confined, as it plainly is, to the United States and the States severally.

The truth is, that *far the greater part* of the Enforcement Act is "outside" of the Amendments which it professes to enforce. This act presents another live and very lively issue to the people of this country; and already are the thunders of opposition heard from Republican as well as from Democratic quarters. Under the pretence of restraining the United States and the several States from denying or abridging the right of suffrage on account of race, color, or previous condition of servitude, this act takes control of the general and local elections in all the States—seizing the whole political power of the country, and wielding it by the bayonet; and fills up pages of the statute book with new offences and heavy penalties levelled, not against the United States or the several States, or their officers by whom alone the Fifteenth Amendment can *possibly* be violated, but against private citizens. The Alien and Sedition Acts, which, by the power of their recoil, exterminated their authors, were not equal to this act either in the nakedness or the danger of their usurpation. If this act shall prevail and abide as law, then our heritage of local self-government, lost to us, will pass into history, and there stand out forever a glory to the noble sires who wrung it from one tyranny, and a shame to the degenerate sons who surrendered it to another.

My third and last position is, that even if the Enforcement

Act were valid in all its parts, yet I have not violated any one of them. I am accused under its 5th and 19th sections.

The 5th provides a penalty against "preventing, hindering, controlling, or intimidating, or attempting to prevent, hinder, control, or intimidate," any person from voting "to whom the right of suffrage is secured or guaranteed by the Fifteenth Amendment." I have already demonstrated that the Fifteenth Amendment secures or guarantees the right of suffrage to nobody whomsoever. It is impossible, therefore, that I am, or that anybody ever can be, guilty under *that* section.

But again: the testimony utterly fails to show that I interfered in any way with the voting of any person legally entitled to vote, or, indeed, with the voting of any person whomsoever. It was incumbent upon the prosecution to show *what* persons, if any; and that they were persons entitled to vote. The Enforcement Act itself inflicts a penalty on all persons who vote illegally; and, of course, cannot intend to punish the prevention or hindrance of *illegal* voting. The attempted proof as to my interference with voters, relates to four persons only. It fails to show that either one of the four was a person entitled to vote. It fails to show that three of them did not actually vote. It fails to show that any one of them offered to vote or even desired to do so. It fails to show that any one of them heard me make a single remark, saw me do a single act, or was even in my presence from the beginning to the end of the three days' election.

As to the remark which I made to a small crowd about prosecuting all who should vote without having paid their taxes, I have this to say: In the first place, it is not shown who composed that crowd, nor that a single one of them was a person entitled to vote. In the next place, the remark was a lawful one; for it was simply the declaration of an intention, not to interfere with legal voters, but to prosecute *criminals;* and therefore cannot be tortured into a threat in any legal or criminal sense of that word. A threat, to be criminal, must be the declaration of an intention to do some unlawful act; and it never can be unlawful to appeal to the laws.

I pass to the charge, under the 19th section, that I inter-

fered with the managers of election in the discharge of their duties, by causing their arrest under judicial warrant. That part of the 19th section which is invoked against me is in these words: "Or interfere in any manner with any officer of said elections in the discharge of his duties."

My first answer to this charge is, that the managers were arrested, not in the discharge of their duties, but in the violation of one of the most important of them—one prescribed not only by the Constitution of the State, but by this very Enforcement Act itself; for the act made it their duty to reject all illegal votes, and provided a penalty for receiving them. These managers had received and were still receiving the votes of persons who had not paid their taxes of the year next preceding the election, as required by the Constitution of this State. The testimony shows that this fact was fully proven, and not denied by them, on the commitment trial before the magistrate. The reply to it then was, and now is, not a denial, but a justification on two grounds. One of these grounds was, that the oath which they had taken, under the Akerman Election Act, required them to let every person vote, who was of apparent full age, was a resident of the county, and had not previously voted in that election. They said then, and it is now said again here, that they could not inquire into the non-payment of taxes or any other Constitutional disqualification for voting, except only non-age, non-residence, and previous voting in that election. And yet, a man who was of full age, and a resident of the county, and who had not previously voted, was excluded by these same managers on the ground that he was a convicted felon. Their own action in excluding the felon is utterly inconsistent with their construction of the obligation of their oath. The oath, as construed by them, and now construed here by the prosecuting attorney, is in plain conflict with the Constitution, and is, therefore, void, and could not relieve them from their Constitutional duty to exclude all who had not paid their taxes. The first ground of the managers' justification therefore fails.

Their other ground was, that the unpaid tax of those whom they had allowed to vote without payment of taxes, was only

poll tax, and that the poll tax had been declared by an act of the Legislature to be illegal and unwarranted by the Constitution, and its further collection suspended.

The fact that it was only poll tax does not appear from the evidence before your Honor, but I admit it to be true. I did not come here to quibble. I am here to justify my conduct under the *law*, on the truth as it exists, whether proven here or not. My answer is, that this declaratory act of the Legislature is false, unconstitutional, null and void. The act is but the opinion of the Legislature, concerning the constitutionality of a previous act of 1869, imposing the poll tax for that year. That act is before me, imposing a poll tax of one dollar per head "for educational purposes," using the very words which are used by the Constitution itself in defining the purpose for which poll taxes may be imposed. Now, sir, the question which I ask is, what it is that makes *this* act "illegal" or unwarranted by the Constitution? Surely, it is not made so by the subsequent declaration of the Legislature, put forth just before the election, to serve a palpable, fraudulent, party purpose.

The Legislature is not a Court; but on the contrary it is expressly prohibited by the Constitution from exercising judicial functions, and its declarations concerning the constitutionality of Legislative acts, have no more authority than those of private citizens. The single question, then, is whether the declaration in this case is *true*. The Legislature assigned its reason for the opinion it gave. What is that reason? It is that the Constitution limits the imposition of poll taxes to educational purposes; and that when the poll tax in question was imposed, there was no system of common schools or educational purpose to which it could be applied. Therefore, they said its imposition was "illegal and unwarranted by the Constitution." They said it was unwarranted by the Constitution to provide the money before organizing the schools to which the money was to be applied; that is to say, the only Constitutional way to organize the schools was to go in debt for them! I lack words, sir, to properly characterize the *silliness* of this reason.

But, curiously enough, the Constitution itself took the very

course, which these sapient legislators declared to be illegal and unwarranted by the Constitution. It provided money and devoted it to these very Common Schools, which were still in the womb of the future at the time of its adoption. It dedicated to that purpose the whole educational fund which was then on hand. Therefore, I say, this declaratory act is not only false, but is in the very teeth of the Constitution itself. Mark you, sir, it did not *repeal* nor attempt to repeal the poll tax; it only suspended its collection. But, I say, if it had been a repeal in terms, instead of a mere suspension, it could not change the case, as to the right of a person to vote without having paid the tax. The Constitutional requirement is, that "he shall have paid all taxes which may have been required of him, and which he may have had an opportunity of paying agreeably to law for the year next preceding the election." The poll tax was required in April, 1869, and continued to be required, up to the passage of the aforesaid false declaratory act, in October, 1870—a year and a-half. During all that period tax-payers had "opportunity" to pay it. On the day of the election, then, any man who had not paid his poll tax for 1869, stood in the position of not having paid a tax which had been required of him, and which he had had very many opportunities of paying agreeably to law. He stood clearly within the *letter* of the Constitutional disqualification for voting. He stood also within its reason and spirit, for its true intention was to discriminate against the citizen who should not have discharged a public duty for the year next preceding the election. Nothing but *payment* could remove from him the character of a public delinquent. Legislative remission of the tax cannot serve the purpose, for he still stands after that as a man who *has failed in a public duty*. The most that can be said for him is, that after the repeal, the tax *ceased* to be required of him; but the only material facts—that *it had been* required, and could have been paid, but had *not* been paid—remain unaltered.

The managers, then, in receiving the votes of persons who had not paid their poll tax, were not in "the discharge of their duties." Whether they *thought* so, is not the question. If they were really wrong, then I was *right*, and surely I am not to be

punished for *being right.* There was no interference with them in the discharge of their *duties.*

But again: even if I were wrong in the opinion which I entertained of their duty, yet I did not interfere with them *unlawfully.* The whole context of that clause, in the 19th section, under which I am accused, shows that the interference contemplated is an *unlawful* interference; especially the words which come immediately after it—"or by any of such means or *other* unlawful means," etc. This word "other" shows conclusively, that all the means contemplated were only such as were of an *unlawful* character. This would be implied in construing any penal statute, even if it were not expressed; for the universal rule of construction for penal statutes is, to construe strictly against the prosecution, and liberally in favor of the accused. Is it possible that any Judge can have the hardihood to hold that it was the intention of this Enforcement Act to impart to managers of election the sacred character of Eastern Brahmins, making them too holy to be touched even for their crimes? Surely it was not intended to give them greater sanctity than belongs to Peers of the British Parliament, or to legislators in our own country while engaged in legislation. Notwithstanding all the high privileges accorded to them, all of *these* are subject to arrest in any place, at any moment, under a warrant charging breach of the peace or felony. Was it intended to protect these managers from immediate accountability for all felonies which they might commit during three whole days? Until *this* shall be held as the intention of the Enforcement Act, it is impossible to maintain that I have violated it in any particular whatever.

The Constitution declares that "the right of the citizen to appeal to the courts shall never be impaired." My whole offence, sir, is this: *that I appealed to a court of competent jurisdiction.* I devoutly believed I was right in my opinion of the law. I believe so now. But, whether I was right or wrong in my *opinion,* who will dare to say that I was wrong in testing that opinion, not by the strong hand, but by appealing to a court appointed by the Constitution for the very purpose of deciding the question? That court decided that I was right:

and the "interference" which followed, sir, was the interference, not of myself, but of the *law*, as expounded and administered by a judicial tribunal. Moreover, sir, the decision of that tribunal stands as the law of the case, until it shall be reversed according to law. These managers were charged with felony under the laws of this State. Was it a crime for me to seek a judicial inquiry into the truth or probability of such a charge? I suspect, sir, that my real crime, in the estimation of my prosecutors, is, that the judicial interposition invoked by me had the effect of preventing numerous repetitions of a crime which would have done signal service to their *political party*.

If angry power demands a sacrifice from those who have thwarted its fraudulent purposes, I feel honored, sir, in being selected as the victim. If my suffering could arouse my countrymen to a just and lofty indignation against the despotism which, in attacking me, is but assailing law, order, and constitutional government, I would not shrink from the sacrifice, though my *blood* should be required instead of my liberty.

II.

SPEECH OF HON. LINTON STEPHENS, AT THE CITY HALL IN AUGUSTA, GA., ON THE NIGHT OF THE 18TH OF FEBRUARY, 1871.

FELLOW-CITIZENS: It was one of the wisest sayings of a very wise man, that "the price of liberty is eternal vigilance." This maxim of wisdom is peculiarly applicable to the present time. Ten States of this Union are to-night under revolutionary governments, originated and imposed upon them by an external power and supported only by the bayonet. These revolutionary governments displace, repress, and, for the time, suppress the regular, republican, constitutional governments which have existed here all the while with an unbroken succession. These revolutionary governments are in the hands of carpet-baggers and scalawags, who treat the laws of their own origination with disregardful contempt; and, under the forms

of official authority, heap upon our people injuries and insults which never before were borne by men born and bred and educated in the principles of Liberty. Shameless plunder, malignant slander, corrupt favoritism, impunity for crimes when committed by partisans of the Government, gigantic extension of the credit of the States to penniless adventurers who come among us under the false and fraudulent plea of "developing our resources," robbery of the very negroes who are sought to be used as the chief instrument of upholding this gigantic system of revolutionary fraud and force—*these* are the fruits of these revolutionary governments. *These* are the products of reconstruction. *This* is the "Situation!" And yet there are those who say: "Let us *accept* the situation." In the last presidential campaign we heard the potent words: "Let us have Peace." They had their effect. They carried the presidential election. Yet wise men then knew, as *all* men now know, that they were a delusion and a snare. "Let us have peace!" It *meant* that freemen, with their necks under the heel of despotism, should remain submissive and quiet. *Such* a peace Turkey has! *Such* a peace Poland has! *Such* a peace, thank God, Ireland *refuses* to have! No people trained in the principles of liberty will ever accept of any peace that is not founded on *liberty*. Tyrants and despots may reconstruct, and re-reconstruct, and re-re-reconstruct *ad infinitum;* but they will never have peace from American-born freemen until they give them their *rights*.

What is really expected by these people who cry "Peace," and "Accept the Situation?" Are they silly enough to suppose that there can be any pause or limit to the career of usurpation? Does anybody need to be told that usurpation is *insatiable?* When did it ever cry—enough? Concede it an inch, and it will always take an ell.—The only way for earnest men to deal with usurpation is to make it *disgorge* all its ill-gotten acquisitions. These peace men call themselves Conservatives. To conserve means, to preserve what we have. If what we have *now* is to be preserved, it will prove the sure instrument of destroying every thing that is worth preservation. The present status, if it is to be "accepted," is enough

to overthrow, and will certainly overthrow, the whole system of constitutional government. It is just the fulcrum which Archimedes wanted to move the world. Let the usurpationists retain what they have already usurped, and their whole design will inevitably be accomplished.—The wrongs of usurpations have been borne by us with a patience which has only encouraged, not checked its career. How can men expect it to pause, when it is now daily going on with new and Titanic strides? The same revolutionary violence which brought forth the Fourteenth and Fifteenth so-called Amendments of the Constitution is daily hatching and spawning new usurpations and despotisms.—One of these is the late Enforcement Act of Congress, which professes to be based on these revolutionary amendments for its authority. It has but little relation to the Fourteenth, being chiefly occupied with its professed intention to carry out the Fifteenth.

If this Fifteenth Amendment were granted to be valid, as it is not and never should be, yet a consideration of its terms will show how immense is the usurpation of the Enforcement Act in the professed object of carrying it out.

The Fifteenth Amendment is simply a prohibition on the United States and the several States. It relates to nobody else, touches nobody else. It prohibits the United States and the several States (in regulating suffrage in cases where they respectively have the right to regulate it) from denying it or abridging it on account of any one of three reasons: race, color, previous condition of servitude; leaving them perfectly free to abridge it or deny it on account of an indefinite number of *other* reasons. It is simply a prohibition upon the character of *laws* which may be passed by the United States or the several States. If acts are passed against the prohibition (granting the prohibition itself to be valid) they would be void; and the *remedy*—the only appropriate or admissible remedy—would be to appeal to the courts and have them pronounced void. It is exactly analogous to the prohibitions on the States in the original Constitution—that "no State shall coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of at-

tainder, or *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility." Who ever dreamed that these prohibitions on the States gave *Congress* the power to control the whole subject of money, and seize all the money of the country into its own hands; to take control of the whole subject of credit, and regulate it in all its ramifications; to take charge of the whole subject of debts, and the whole subject of bills of attainder, and *ex post facto* laws; and the whole subject of contracts; and the whole subject of titles of nobility? Who ever dreamed that Congress could enforce these prohibitions on *States* by heavy penal statutes against private citizens? Who ever dreamed that Congress could enforce the prohibition against State laws impairing the obligation of contracts, by making it a felony for any citizen to seek the benefit of relief acts passed by the States? Nay, more. Is this prohibition against denying or abridging the right of suffrage on account of race, color, or previous condition of servitude, any more obligatory, or does it confer upon Congress any more power than the provision in the original Constitution defining who shall be entitled to vote for President, Vice-President, and members of Congress, making them the same in each State as electors for the most numerous branch of the Legislature in that State? And yet who ever dreamed that this positive provision of the Constitution gave Congress power over the whole subject of electors and elections in the States, lest, peradventure, some State might pass a law violating that provision? The attempt on the part of Congress to exercise any such powers as these under the prohibitions on the States would have been regarded at any time before the late war as a usurpation and an utter nullity; and any party that might have supported the criminal and traitorous attempt would have been swept into swift annihilation. And yet, under this mere negative provision of the Fifteenth (so-called) Amendment, Congress, by this Enforcement Act, has taken into its own charge the elections in all the States, and prescribes who shall and who shall not vote. I see by the papers of to-day that they are not content with this act, enormous as it is in its usurpation, but that one House of Congress has passed

an act greatly enlarging the usurpation, providing for a United States officer to *supervise* the elections in each State, with large judicial powers, and with power to use the bayonet at his own discretion. *This* is *pausing* in the career of usurpation!

As a very appropriate accompaniment of this enlarged Enforcement Act, Mr. Attorney-General Akerman recommends the establishment of United States penitentiaries and jails in all the States. All our Presidents, from Washington down to the time of the recent war, found ample accommodation for all their prisoners in the prisons of the States under State visitation, inspection, and control. This dynasty needs bastiles of its own, to be filled with the political prisoners, who may be expected to come in large numbers as the product of the new and ever-increasing despotic usurpations; and to be subject to no visitation or interference but that of the imperial guard. Political prosecutions are not confined to me, nor to this State. A cry comes up against them from Tennessee also, and from other States. They are intended to become an *institution;* and the bastiles form an indispensable part of the institution. And yet all this is done while the right of suffrage is neither denied nor abridged, on account either of color, race, or previous condition of servitude, by the United States, or by any State, or anywhere in the Union.

Let us look at a little more of the *pausing!* I see a bill has been introduced into Congress to appoint a Ku Klux Commissioner for every county in the Southern States, he also to be armed with large judicial powers and with the bayonet—to administer the laws over the people of the States in relation to assaults and batteries, murders, trespasses, and all crimes, real and pretended, which can be gathered under the hundred-headed hydra of "Outrages." This, I suppose, is a part of the new "outrage programme" which has been so brilliantly inaugurated under the auspices of an Outrage Message and a Congressional Outrage Committee. Outrages they are, indeed! A Congressional committee to investigate the condition of States, and determine, forsooth, whether their constituencies are "worthy" to be represented in Congress! This is the

question which General Butler has sprung as to the constituency of this very Congressional District—whether they are "worthy" to be represented. True, our Representative was received under the *prima facie* case made by his certificate of election; but the great fundamental question, as to the worthiness of our constituency, was reserved for future decision. What that decision may be, who can tell? This question, together with divers other important matters, is to be investigated, in the mean time, by the Congressional Outrage Committee. Such a committee, for such a purpose, before the war, would have raised a howl of derision and indignation throughout the land. They would raise it *now* if this investigation were to be applied to any Northern State of this Union. Yet, when they shall come to us (if they shall see fit to make us a visitation), bearing the badges of our degradation, we shall be accounted as very disloyal, rebellious, and outrageous, if we do not bow and smile, and beg them to do us the honor of entering into the bosoms of our families.

I have something further to say about these outrages which form the chief capital of those who habitually seek to inflame the minds of the North against their Southern brethren, to support them in re-re-reconstruction, which are to be used as the instrument of overthrowing the Constitution, abolishing the States and the ballot, and consolidating a grand central military despotism.

The situation of these Southern States under reconstruction has been so extraordinary that it would be wonderful indeed if disorders and violations of law had not been unusually multiplied. They are the necessary product of the *system*. The citizens generally have striven to keep them down, while the revolutionary governments, not only upturning the political status, but also, almost inverting the social, have been the most potent influence in producing these disorders. Under these governments, administered by carpet-baggers, scalawags, and negroes, the pardoning power has been made the shameless instrument of recruiting their party, and of making the people despair of an impartial administration of the laws. I will mention a striking instance out of a multitude which are notorious.

Fourteen negroes in Hancock County were convicted of an assault with intent to murder. The proof was a confession in every case, corroborated by other most satisfactory evidence. This proof showed that the crowd went to a man's house between midnight and day, yelling like savages, and swearing they would kill him. They broke down his door and shot into his house, wounding himself, and lodging a load of shot in the bedstead just over the head of his wife. He saved his life only by making his escape through the floor. This was all done without provocation. They suspected that this man, Marchman, was concerned in the killing of a negro, who had been killed some time before, by some person or persons unknown. The proof on the trial showed that their suspicion was utterly groundless, and that when the negro was killed, Marchman was at home, and could not possibly have known any thing about it. They acted on the mere wild suspicion of excited ignorance. They had a fair trial and were defended by very able counsel. The verdict of conviction was publicly approved by Judge Andrews, whom you know to be an appointee of Governor Bullock, and a member of the Republican party. Yet all of these fourteen were speedily pardoned out of the penitentiary by Governor Bullock, and turned loose upon an outraged people. One of them was very soon put back into the penitentiary for a new offence in an adjoining county. This is a specimen, and but a specimen, of the outrages which we *suffer*.

The carpet-baggers and scalawags, who do most to engender strife between the races and produce outrages, speak only of those which are committed on one side. They are as silent as the grave about those incited by themselves, and perpetrated by their ignorant and brutal tools.

I have yet one other remark to make about these outrages. I know of none where a jury has failed to convict when the guilty party, white or black, was shown by satisfactory proof; and I know of no place, North or South, where convictions are had, or would be desirable, *without* proof. There have been foul murders committed in Boston, and nobody hurt for them. One notorious case of the same kind has lately occurred in New York city. Suppose I should say murder is done in Boston and

New York "with impunity." Suppose Congress should send an Outrage Committee to investigate Boston and New York!

The truth is, the general rule there is, that criminals are punished when they are found out. The general rule here is, that they are punished when they are found out, and *not pardoned.*

This is a truthful sketch of the situation—usurpation accelerating instead of pausing in its career; revolution giving us wrongs, outrages, injuries, and insults instead of the protection, peace, prosperity, and fraternity which we have a right to expect from any government, and should certainly receive from our rightful constitutional governments.

This is the situation which we are exhorted to accept. This is the prospect on which we are invited to repose, with assurance that usurpation will henceforth cease, and a "new departure" will be taken in politics under the auspices of sound principle. The appeal is made to us on the supposition that we are not men, but *geese.* The appeal is made to the country, North and South, upon the supposition that the country, North, and South, is composed of geese, not men.

Why should we accept the situation? Are not reconstruction and all its products revolutionary, unconstitutional, and void? Are they not demonstrated to be so? Where is the harm in *calling* them so? Where is the harm in *treating* them so? It is said that the remedy proposed would itself be revolutionary. What is that remedy? It is but the ballot. The ballot, used how, and for what? Peacefully, for the election of men, who, when elected, will treat the Constitution *as* the Constitution; spurious interpolations upon it *as* spurious interpolations; laws *as* laws; nullities *as* nullities; truths *as* truths; lies *as* lies. The remedy is, not to perpetrate new revolution, but to RECEDE from the revolutionary measures of the usurpers, to withdraw the bayonet, and leave the constitutional governments, which are now displaced by the revolutionary ones, to peacefully rise from their state of repression, and, by the resumption of their legitimate functions, solve the whole problem of restoration in a manner worthy of freemen, and distasteful only to usurpers and despots.

The revolutionary usurpers have an impudent habit of call-

ing themselves "legitimists," and Democrats "revolutionists." This is but the old trick of the thief crying, "Stop thief!" Demonstrate to them that their measures are revolutionary and void, and the reply is renewed *assertion* of their legality and validity. Argument is met only by iteration and reiteration of the original falsehood.

It is the case of the robber who has entered your house by violence, and has no plea for remaining there, except that he has *got in*. No man of spirit would tolerate the plea for a single instant, even though the robber should give the best indications of future good behavior, instead of proceeding as rapidly as possible to plunder your whole house, just as he is now actually doing.

Centralism, like the once veiled prophet of Khorassan, is now unveiled. It stands revealed in all its hideousness. Who so depraved as to worship its deformity? Who so dastardly as not to plant a dagger in its vitals? The weapons to be used are those of Truth and Reason.

The Temple of Liberty is in possession of the money-changers and the dove-sellers. They are desecrating its altars, and laying their unholy hands upon the very ark of the covenant. Nay, more; they are undermining the very foundations of the temple itself; and if they are not driven out by an indignant people, not one stone will be left standing upon another of the once magnificent structure.

Our error heretofore has been the error of silence under wrong. I have never counselled violence. I do not counsel it now. I deplore it. But I do counsel an unremitting appeal to argument, truth, and justice. Using these as her sword, and a sublime patience as her shield, the South should never cease to agitate, and *agitate*, and AGITATE, until she obtains the righting of her wrongs, and the re-establishment of the Constitution in its purity and its beauty.

Indications are now most promising that her people will be united in the resolve to recognize no alliance with any party that will not give us our rights. If parties wish to go into scrambles for offices and spoils, we will have no part nor lot with them. This is the seed-time of ideas for the next Presidential

election. You may rest assured that that election will turn upon *ideas*. No party can maintain itself in this country if it cannot defend itself by argument. Never, since the close of the war, has the time been so auspicious as now for a candid hearing and ready reception of the truth in the North. Reconstruction was never approved there. It was merely tolerated and accepted as the only feasible solution of what was regarded as the pressing and distressing problem of restoration. It is now demonstrated that reconstruction is a failure and a crime; and that its authors are using it, not as a means of restoration, but as a means of *alienation;* and that they intend to use it as an instrument for overthrowing the Constitution, and converting this Union of States into a consolidated, despotic centralism. Its wrongs have heretofore been chiefly confined to the South. It is now laying its audacious hands upon the North also. There is no longer any decent concealment of its purpose to control the elections everywhere by the bayonet, and to convert our government from one of the ballot into one of force. This purpose can be arrested and defeated only by the intelligence and energy of public opinion. Public opinion will be equal to the occasion. When the Boston Port Bill was passed, Virginia raised the cry: "The cause of Boston is the cause of us all;" and the cry was caught up by *all* the States, and kindled them all with a flame of enthusiasm. The cry now is: "The cause of the Constitution is the cause of us all;" and Boston herself will not fail to respond to it. The spirit of liberty is not dead in the land where the battles of the Revolution are commemorated by monuments and by literature. Its echoes yet linger in Faneuil Hall; and some Otis, or Adams, or Webster will wake them with new power and new glory.

It is also now demonstrated that the supposed difficult problem of restoration finds its natural and happy solution in receding from revolution and returning to the Constitution.

The party that gives *this* platform to the country in the next Presidential campaign, and puts candidates upon it earnestly devoted to its success, will be irresistible in position and in argument; and, *therefore*, will carry the country.

It will, at all events, have the undying gratitude of the

South. She, at least, *can* stand nowhere else. Any other position for her is forbidden alike by self-respect and self-preservation. And what is now her position must very soon inevitably be the position of all the States.

III.

LETTER OF EX-GOVERNOR CHARLES J. JENKINS TO HIS EXCELLENCY JAMES M. SMITH, PRESENT GOVERNOR OF GEORGIA.

AUGUSTA, GA., *March* 15, 1872.

His Excellency, James M. Smith:

SIR:—Since my removal from the office which you now hold, in January, 1868, by Major-General Meade, of the United States Army, commanding Department of Georgia, I have refrained from communication with the *de facto* government of the State.

Had there been no interference of the Federal Government, my term of office would have expired in November, 1867, and there would then have been assembled a Legislature to whom I would have rendered an account of my stewardship, accompanied by the usual reports of the Treasurer and Comptroller-General for that year. Such a communication, with like accompaniments for the preceding year, had been submitted to the General Assembly at their second session in November, 1866. There having been neither Governor nor Legislature elected in 1867, I, under a provision of the Constitution, held over; but there was no Legislative Assembly. From the time of my removal until the installation of the present Governor and Legislature, those departments have not, in my judgment, been filled by persons rightfully representing the people of Georgia or faithfully guarding their interests.

I am informed that a committee appointed for that purpose by the Legislature convened in 1868, examined the books and accounts of Mr. Treasurer Jones for the last year of my administration, and reported them correct.

I desire, however, to make a formal representation of certain transactions during my official term, of which no account has been given, and some of which have been grossly misrepresented to the public.

Such a communication to a State Executive, from a predecessor, is, I know, unusual, if not unprecedented; but I trust you will find in the circumstances, heretofore and now surrounding me, a justification of it, and that you will kindly place it on file, with the archives of the State, where it may hereafter be accessible for reference if desirable.

I need scarcely remark that, owing to the suspension of the State government at the close of the war—serious compli cations with the Federal government resulting from that conflict—the utter exhaustion of our treasury, the impoverished condition of our people, and the interference by Congressional legislation with the State government first inaugurated after the war, my administration was fraught with difficulty, responsibility, and anxiety. When I entered upon the duties of the office there was no money in the treasury—there were outstanding liabilities of Governor Brown's last term (owing to his removal by the United States Government several months before its constitutional end)—debts contracted by Provisional Governor Johnson, to carry on the government and the expenses of the Convention of 1865, provided for by temporary loans. There were also ante-war bonds, and interest coupons of considerable amount which matured during and after the war—the expenses of the Legislature which came in with me, and the accruing demands of the civil list. The bed and track of the Western & Atlantic Railroad were in a dilapidated condition, its depots and bridges in a great measure destroyed, and its rolling stock partly lost or destroyed, and partly worn out and valueless. Its Superintendent under Provisional Governor Johnson, with his approval, had contracted a debt with the United States Government of about four hundred and seventy thousand dollars ($470,000) in the purchase of rolling stock and other railroad property, and still in these items there was a large deficiency.

The Capitol, its grounds and furniture, and the Executive

Mansion and its furniture, required extensive repairs and renewals. The Penitentiary had been partially burned and rendered insecure, requiring a large outlay in rebuilding and strengthening it.

Besides all this, there were no taxes collected in 1865. In view of this condition of our financial affairs, it must, I think, surprise the reflecting mind that the Legislature, to meet these liabilities, and put the machinery of government again in motion, resorted to the credit of the State by the issue of its bonds only to the amount of three millions and thirty thousand dollars ($3,030,000).

The Convention of 1865 did, indeed, authorize the issue of bonds, amounting to five hundred thousand dollars ($500,000) to meet the emergencies of the hour. But these, owing to restrictions put upon them, were found available only for very short loans, and were so used, and redeemed with proceeds of bonds afterward authorized by the Legislature, except about twenty-six thousand dollars ($26,000) which had not been presented at the Treasury, although called in.

There were also bonds authorized by 7th section of the act of 12th March, 1866, amounting to six hundred thousand dollars ($600,000), to pay the land tax assessed by the United States Government against the people of Georgia.

These bonds were engraved with others, but as the United States authorities refused to receive payment of the tax from the Executive of the State, were not signed or sealed until after the next session of the Legislature (Nov., 1866).

On their assembling, I reported to them the failure to use those bonds for the purpose intended, and advised that the Executive be authorized to issue them in redemption of, or exchange for, bonds of the State, which would mature within a short time. Authority to that effect was given by the Legislature, and then these bonds, in all respects similar to other bonds issued under the act of March 12, 1866, were executed. As these bonds bore a higher rate of interest than those to be redeemed by them, and were secured by a mortgage on the Western & Atlantic Railroad, it was believed that no difficulty would be encountered in exchanging them for the latter

on terms advantageous to the State, and thus our suffering people be released from taxation, to meet a heavy demand upon the treasury at no distant day. They were accordingly placed in the National Bank of the Republic (New York) for that purpose, and notice of the terms on which the State would make the exchange extensively published. This exchange had been commenced, but no great progress had been made in it at the time of my removal. Knowing no safer place of deposit for them, and desiring not to suspend the process of exchange, I suffered them to remain there, giving written instructions to the agent to continue it, but beyond that, to deliver them to no person except upon the order of John Jones, Treasurer, or of myself.

The Legislature assembled in 1868, passed a resolution authorizing the Governor inaugurated by them to take possession of all bonds of the State executed but not negotiated, wherever to be found. Under this authority, as I have been informed, the acting Governor, R. B. Bullock, demanded of the bank the unexchanged bonds then in their possession, and the agent, under legal advice, surrendered them to him, but required of him an indorsement on each bond, of the manner in which he became possessed of it. The precise amount so delivered I know not, but suppose it could have varied little from six hundred thousand dollars. I am, of course, ignorant what disposition has been made of them. If they have been faithfully applied to the object intended, they have not increased the indebtedness of the State, but have only postponed, to a more convenient time, its payment, *pro tanto*, and the relief has accrued, or will accrue, to administrations succeeding mine.

If otherwise, the misapplication is chargeable to the Executive, who, rather than come to an account with the fairly elected and honest representatives of the people he was charged with having plundered, ingloriously fled the State. In no event can those bonds be fairly set down as an original indebtedness incurred by the State during my official term, and by my advice.

Other bonds were issued by me, in conformity with the act of February, 1856, authorizing a subscription to the stock of the

Atlantic & Gulf Railroad Company, and the issue of bonds of the State, in payment of installments on that stock, as the corporation might show itself entitled to them. Evidence that they were so entitled, was in each instance adduced before the bonds were issued; amounts, dates, etc., will appear by reference to the records of the Treasurer's and Comptroller-General's offices.

But this liability was incurred ten years before my time. The amounts of the two classes of bonds last mentioned have, in an indiscriminating, unscrupulous partisan spirit, been added to the three millions and thirty thousand mentioned before, and the grand aggregate presented as an increase of the public debt under my administration and by my advice.

I think I have disposed of those two classes, and will not again refer to them. I now propose to show that the public debt was increased by less than one-half of the three millions and thirty thousand dollars ($3,030,000).

The authority for issuing these bonds, and the purposes to which they were to be applied, will be found in the act of the 12th of March, 1866, and the 11th section of the General Appropriation Act of the same year. The following items embraced in the act first mentioned were obviously provisions for funding existing indebtedness, and therefore did not increase the public debt:

Section 8—To pay the matured bond debt and interest thereon	$830,000
Section 1—To pay debt to United States Government for railroad property purchased during Provisional Governor Johnson's term, and interest	500,000
Loans contracted by Provisional Governor Johnson	30,000
Making an aggregate of	$1,360,000
Which deducted from the new bond debt of $3,030,000 leaves as increase of public debt	$1,670,000
Among the appropriations made and paid from proceeds of these bonds were two extraordinary items of pure charity, having all the moral obligation of debts, viz.: to purchase corn for the destitute, and artificial limbs for disabled soldiers	220,000
Leaving a balance of	$1,450,000

This balance was relied upon to repair and complete the

equipment of the Western & Atlantic Railroad; to repair and refit the State House, and its grounds; the Executive Mansion and furniture; the Penitentiary; to pay the unfunded debts of the State (by no means inconsiderable), and to defray the entire expenses of the government for one year, including the support of its great public charities, and the accruing annual interest on the public debt.

This sum of one million four hundred and fifty thousand dollars was subjected, before it came into the Treasury for general use, to a diminution by the expenses incident to the preparation and engraving of the bonds, the execution of the mortgage, commissions to agents employed in the sale of them, and the rate of discount upon them, for no bonds of any Southern State could then be negotiated at par value. The bonds first sold—about nine hundred thousand dollars ($900,000) in amount—yielded ninety per cent. A few were afterward sold for ninety-five, and they would undoubtedly have reached par value in the market, but for the depressing effect of Congressional legislation upon the credit of the Southern States. Under this withering influence, these bonds afterward fell below ninety in the New York market. For more minute details respecting the disposition of these bonds, reference is made to the records of the Treasury and of the Comptroller-General's office, to which, as I write, I have not access.

I have mentioned a debt contracted by the Provisional Superintendent of the Western & Atlantic Railroad under Provisional Governor Johnson, and which debt occasioned my first unpleasant complication with the United States Government. The Superintendent insisted that he was, by the terms of the contract, entitled to a clear credit of two years upon the amount of the purchase. The Sale-Agent of the United States, on the contrary, affirmed that by the terms of sale, the purchaser could only be entitled to such credit, on giving bond with approved personal security, for the payment of the debt at the expiration of two years; in default of which, monthly payments of the twenty-fourth part of the debt, with interest, at 7-30 per cent. must be made, until the debt was extinguished. The contest between these officials was an unequal one. The monthly

payments were peremptorily demanded. I suggested to the Legislature the expediency of authorizing the Superintendent of the Western & Atlantic Railroad to give a bond for the payment of the debt within two years, and of pledging the faith of the State for its payment. Accordingly the act of the 13th March, 1866, was passed, and a bond executed in conformity with it, and delivered. Still, for lack of personal security, the monthly payments were demanded. In an interview with Mr. Stanton, Secretary of War, I protested against this, and insisted on the payment of the whole sum at the expiration of the two years—urging that the pledge of the State's credit was more than an equivalent for personal security.

He heard me patiently, but when I concluded, remarked curtly, "I can give you no relief. You seem to think because this railroad is the property of the State, and the debt incurred, *her* debt, and because she had given her bond for it, she should be admitted to the privilege of purchasers giving bond and security. I cannot make that distinction. The terms must be complied with."

I asked permission to take issue with him on that point. I pressed upon him the universal recognized comity between nations and States, between organized governments, and stated as a corollary from it, that one Government would accord to another a credit never given to an individual. I concluded thus: "I have not supposed, Mr. Stanton, I should live to see the day when the United States Government would send the Governor of a State out to hunt after *personal security for a money contract.* I cannot lower the dignity of my State by doing such an act."

The stern Secretary relented, considered, and finally took the matter before the Cabinet, who referred it to the Secretary of War and the Attorney-General, with power to act. I then went before the latter to discuss the question with him. So soon as I broached the proposition requiring a State to give personal security for a debt, Mr. Stanberry, that upright man, courteous gentleman, and able jurist, interrupted me with the remark, "Governor, I confess that proposition revolts me." "As it has done me, Mr. Attorney-General," I replied. He

rejoined, "Oh, that will not do. Mr. Stanton must give that up." And he did give it up, and cheerfully, at last.

I refer to this matter partly to show that, among those distinguished men, members of the administration (and, we may infer, by the Cabinet), Georgia was, at that time, recognized as having the status of a State of the Union.

Early in the year 1866 the Collector of Internal Revenue for the Fourth District of Georgia required the Superintendent of the Western & Atlantic Railroad to make monthly returns to him of the gross receipts from the road, and to pay a tax of two and one-half per cent. upon them.

Believing the tax to be illegal, because assessed upon the revenue of the State, I appealed against it to the Secretary of the United States Treasury, who, after a reference of the question to the Solicitor of the Treasury and a report by him, overruled my appeal and ordered the collection to proceed. Not satisfied with the decision, I filed a bill in equity in the District Court of the United States, in the name of the State of Georgia, against the Collector, seeking to enjoin the collection of the tax. After argument upon a rule against the Collector, to show cause in Chambers why an injunction should not issue, the Judge reserved his decision until the next term of the Court in Atlanta; but assured the Solicitors of the State, in the presence of the District Attorney and the Collector, that meantime no further action in collection of the tax would be taken.

During his temporary absence from the State, however, and before his decision, the Collector peremptorily demanded payment of the tax then accrued (amounting to more than twenty-four thousand dollars) within ten days, in default of which a levy would be made upon the property of the road. Informed of this, I directed the Superintendent to pay under protest, which was done.

As soon as practicable afterward, in a personal interview with the Secretary of the Treasury, I brought all those matters to his consideration, and found him profoundly ignorant of the filing of the bill, the proceedings in Chambers, the assurance of the Judge respecting suspension of action, and the sub-

sequent enforcement of payment. I do him the justice to say, that he manifested genuine surprise and indignation at the last stage of the proceeding. He pronounced it "all wrong," and immediately summoned before him the Deputy Commissioner of Internal Revenue (the Chief being absent at the time), who, after hearing the recital, concurred in the Secretary's opinion, and declared himself equally ignorant and innocent of the wrong.

The result was that the Secretary ordered the suspension of the collection, until rendition of the Judge's decision (saying he thought I had adopted the best course for the settlement of the question), but declined to refund the sum paid under duress, which had been pronounced "all wrong" until the decision was made.

At the next term of the Court, Judge Erskine delivered an elaborate opinion, concluding with an order of injunction *pendente lite*. A copy of this decision was forwarded to the Department with a second demand for repayment, which was declined on the ground that the Secretary was considering the propriety of carrying up the question.

The Collector, I was informed, never answered the bill, nor put in an appearance; and at the September term, 1867, the Judge granted a perpetual injunction, and decreed that the sum paid under duress be refunded.

A third demand was then made for repayment, but I was answered that the legality of the tax had been referred to the Attorney-General of the United States, and that the Department would await his opinion. That was soon after given, sustaining the decree of the Court, which declared the tax illegal. Then, upon a fourth demand, the money was refunded, but interest on it was refused, although the Treasury of the United States had held it about eighteen months, and although during the same time interest was accruing at the rate of 7.30 per cent. against the Western & Atlantic Railroad to the United States, on the debt before mentioned, and soon after paid in full.

But for this appeal to the Judiciary, *in limine*, it cannot be doubted that this onerous and illegal tax would, year after

year, have been extorted from our impoverished State by the spoiled and spoiling minions of power. It is but one of many exhibitions of the tyrannous and rapacious spirit in which the ruling party have requited the unconditional and sincere submission of the Southern people to the authority of the Federal Government. These wrongs I impute to the ruling party—theirs is the sin; and theirs, in the time of recompense, will be the shame and the suffering. *We* can only possess ourselves in patience, looking for the outstretching of His right arm who has said, "*Vengeance is mine, and I will repay.*"

But these things should not be allowed to pass unheeded or unchronicled.

Great as were the embarrassments encompassing the office during the first year of my term, they were vastly increased by the passage of the Reconstruction Acts, and the entrance into the State of a military chieftain, transferred from "*headquarters in the saddle*" to headquarters in Atlanta. This man came invested with despotic power over the people of Georgia, and with authority, at his sovereign pleasure, to remove from office any one of their chosen public servants. And these things—shades of Washington, Jefferson, and Madison!—were done, notwithstanding the distinct recognition of Georgia (either before they were commenced, or during their progress) as a State within the Union, by every department of the Federal Government. I pause not to produce proofs of the assertion; but I challenge an issue upon it.

These Reconstruction Acts, it will be remembered, had been passed by the Congress of the United States over the veto of the President, based upon their unconstitutionality. So soon as action was taken under them—so soon as the foot of the military Despot was impressed upon the soil of Georgia—I repaired to Washington and filed a bill, in the name of the State of Georgia, against the intruders in the Supreme Court, seeking to enjoin and set aside these proceedings as infringements upon the reserved sovereignty of the State, and in violation of the Constitution of the United States.

The right of the State to file that bill, and the jurisdiction of the Court in the case, depended upon the fact alleged, that

she was one of the States of the Union. As a foreign power, or a conquered province, she would have had no right to do so —the Court, no jurisdiction in the premises. Still, as the records of the Court show, upon full presentation of the Complaint, formal permission was granted to file the bill; nor was she afterward dismissed the Court unredressed, on the ground that she lacked that status.

After argument, the bill was dismissed because in it there was alleged neither interference, nor the threat of interference, with her *property*, which the Court held was necessary to make a case for their sublime consideration. Nothing so far had been disturbed or threatened, save the modest, though priceless, diadem of her reserved sovereignty (in Radical estimation a paltry bauble), of which that elevated Tribunal could not condescend to take cognizance.

The deep humiliation which then pervaded the entire mass of a proud people—proud in their historical reminiscences, and their consciousness of thorough rectitude of intention and of conduct—will be long remembered. Their final submission was as truthful and unqualified as their resistance had been honest, open, and heroic.

But that humiliation was intensified in the person of their Executive, forced, as he was, by circumstances into daily contact with the insolence of an intruded Ruler, trained to arbitrary military comand, unfamiliar with civil government, and rendered giddy by his unwonted eminence. Had I yielded to the promptings of personal feeling, I would at once have escaped the pain of this unprecedented subordination by resigning the office. But knowing that the position would enable me to keep open to our people a channel of communication with the Chief Magistrate of the Union (who was a reluctant agent in this crusade against liberty), and might thus, in some degree, alleviate their sufferings, I resolved to remain in it, yielding all questions of mere policy, but maintaining principle to the extent of my power; and falling (if fall I must) in its defence. I was powerless to prevent the removal of faithful officers of the judicial department, or the appointment of others to fill their places, or to arrest the latter in the unauthorized

exercise of their ill-gotten offices; but I declined to pay them the salaries appropriated to officers constitutionally appointed and commissioned. This alone would probably have induced my removal; but an occasion of greater moment soon after occurred.

The Congress of the United States, by their nefarious Reconstruction Acts, had provided for the assemblage of a Convention, at Atlanta, to frame a Constitution for the State in lieu of that adopted in 1865, after the close of the war. The latter was confessedly Republican in character—acknowledged as the Supreme law of the State, the Constitution of the United States and all acts of Congress in conformity therewith—had received the President's approval, and under it the existing State Government had been organized.

The Congressional act which called the Convention of 1867 and 1868 together, provided for defraying their expenses, only by authorizing them to levy a tax for that purpose. The body, finding themselves unprovided with subsistence, and incapable of feeding upon their patriotism until relieved by the slow process of taxation, experimented upon the credit of the State, which, though always previously a reliable resource in emergencies, failed to attract capital, when tampered with by them.

In this extremity, they turned their longing eyes upon the Treasury of the State. Whether originally prompted, or only encouraged by the military Dictator, they passed a resolution requiring the Treasurer of the State to pay to their financial agent the sum of forty thousand dollars, for the present use of the Convention. This resolution (being only an entering wedge) was approved by General Pope, under whose broad shadow they held their daily sittings; and armed with this high authority, the agent designated repaired to Milledgeville, and made formal demand of the money upon Colonel John Jones, State Treasurer.

That worthy gentleman and faithful officer refused payment in the absence of an Executive warrant. About this time General Pope (proofs of whose numerous abuses of power had been multiplied to the President by myself and others) was removed from his command in Georgia, and General Meade ap-

pointed to succeed him. One of the successor's first acts was a requisition upon me for a warrant upon the Treasurer to satisfy the demand of the Convention. With this I refused to comply, on the ground that the Constitution, under which I was elected and inaugurated, and which I had sworn to obey, expressly provided that no money should be taken from the Treasury, except by Executive warrant, upon appropriation made by law; and that no appropriation had been made by law to defray the expenses of that Convention. I insisted that the requisition was unwarranted, even by the Reconstruction Acts. The Congress had not ventured upon an act so flagrant as the direct appropriation of money from the Treasury of Georgia. But they had bestowed a largess of power upon a military chieftain, whose lack of training in the principles of civil government rendered him little scrupulous in overstepping constitutional barriers. I felt, and feel, that the *argument* was with me, but the *power* was with the General, and beneath its pressure I and the argument went down together. I was removed by a military fiat, and Brevet Brigadier-General Ruger, of the U. S. Army, a subordinate of General Meade, appointed to succeed me.

On presenting himself to assume the Government, the appointee, in answer to a question by me, read me an extract from his instructions, directing him, in case of resistance, to employ such force as might be necessary to overcome it. Having at my command no force whatever, I contented myself with a protest against the proceeding, as a flagrant usurpation, violative of the Constitution of the United States, and a declaration that I forbore resistance only because I was powerless to make it—and so retired.

I believe it is pretty generally understood that, as far as was practicable, in the brief interval allowed me, I placed the movable values of the State, and certainly the money then in the Treasury, beyond the reach of the spoilers, and in the exercise of a legal discretion suspended the collection of taxes then in progress. At all events, the immediate object of this extreme measure, the placing of the funds actually in the Treasury at the disposal of the Constitution-makers, then unconstitutionally assembled at Atlanta, was defeated. Contemporaneously with

this entire, undisguised usurpation of the Executive Office, those military men took actual possession of the State Capitol, and its grounds—of the Executive Mansion and its furniture and grounds, and of the archives of the State.

Furthermore, they revoked my order suspending the collection of taxes, which they required the Collector to pay to their own appointed treasurer, seized upon the income of the Western & Atlantic Railroad (then in good order and successful operation), and, in short, took within their grasp every dollar of the subsequently incoming revenue of the State.

No insinuation is intended that they appropriated to their own use any portion of the State's money, unless in the way of salaries to which they were not entitled, and about which I know nothing.

It is doubtless true that they went out with cleaner hands than did their immediate successors, the *so-called* Representatives of the People.

The charge is, that by the strong hand of power they wrested this property from the rightful possession of the constituted authorities of the State, and applied it, in their discretion, to public uses unauthorized by her fundamental and statutory law, and subversive of her sovereignty.

Seeing that they had then made themselves amenable to the jurisdiction of the U. S. Supreme Court, as that Court had been understood to define it, in their decision of the previous case, and believing myself still *de jure*, though not *de facto*, Governor of the State, I again went before that tribunal, alleging these acts of progressive usurpation, and seeking redress against the wrong-doers.

The hearing of this case would have brought distinctly under the review of the Court the constitutionality of the Reconstruction Acts, which I especially desired. *Not so the Court.* They—or a majority of them—felt a loyal repugnance to that delicate issue. Leave to file the bill, on application made in open Court, and upon a statement of the allegations contained in it, was unhesitatingly given, the Attorney-General of the United States being present, and making no objection; and the bill was delivered to the Clerk.

But this permission was revoked within twenty-four hours, as having been improvidently granted, although it neither infringed any existing rule of practice, nor committed the Court to any thing touching the merits of the case. Then why revoked? For no conceivable reason other than to open that case to the operation of a new rule of practice, adopted after the permission to file the bill; and which produced unnecessary and vexatious delay. Yet more, in subsequent stages, additional delays were occasioned by exceptional rulings of the Court; and at last we were gravely told that there did not remain, of the term, time enough to hear and determine a motion for injunction.

Before the commencement of the next term (as the Court had probably anticipated) the Atlanta Convention had done its work—Meade and Ruger had disappeared from the scenes, and Bullock and his hungry horde, by force of the bayonet, though under the flimsy veil of constitutional reform, had become "lords of the ascendant." The suit before the Court was not of a vindictive character—damages were not sought against the defendants; but only a riddance from their usurpations. Of course, it would have been folly to pursue them after their abdication. The cause could not have been pressed against them.

Let it not be said that the object aimed at by this litigation was accomplished without the action of the Court. Far from it. Had the Court pronounced the Reconstruction Acts unconstitutional, we would not only have been delivered from Meade and Ruger, but from the whole Atlanta Convention. The existing State Government would have been sustained; Bullock would have remained in the Express Office, and the present derangement of our finances, as well as many other evils, would have been avoided.

When it is considered that the enforcement of the Reconstruction Acts, then in progress, would inevitably overthrow existing State constitutions, and with them existing State governments; that the Executive and Legislative Departments of the Federal Government were distinctly at issue, upon the question of the constitutionality of those acts, and that there was in the Supreme Court a case pending, and a motion in that case, ready

for a hearing, which called for a judicial settlement of that question, what can excuse a refusal to hear it? No more momentous question was ever submitted to that Court. If the allegations in the bill failed to give the Court jurisdiction, why not say so?

If the Executive Department were wrong, and the Legislative Department right, on that great issue, why not, by a solemn judgment, terminate the controversy, and give quiet to the country?

They said there did not remain, of the term, time enough for the hearing—but why not?

The term was not closed by legal limitation, but by judicial discretion. Were their Honors weary — exhausted by their judicial labors? Ah! let them contemplate the weariness of spirit, the exhaustion of resources, since inflicted upon the people of Georgia by the misrule they were called upon to arrest, but would not even inquire into, and then justify, if they can, their delinquency.

I entered that Court with all the veneration for it inspired by a Marshall, a Taney, and their compeers. I left it with the painful impression, which time has not mitigated, that the then incumbents (or a majority of them) had, by procrastination, deliberately *evaded* a judgment they could not have *refused*, without dishonor to themselves; yet could not have *rendered*, without offence to the despotic and menacing faction then and still wielding the power of the Government.

It was probably under the prompting of a similar feeling that the venerable Justice Grier, the senior in years of them all, about the same time, from his seat on the Bench, in open session, declared himself ashamed of the attitude assumed by the Court (in another case resulting from post-war tyranny), and, like an old Roman, shook the reproach from *his* skirts.

Here I turn aside to notice a rumor, invented and circulated to my prejudice, by certain mendacious Radicals of Georgia—that in these suits I had, without authority of law, expended thirty thousand dollars of the people's money. The expense of the first suit, instituted and ended while I was still undisputed Governor of Georgia, amounted in all (including lawyers'

fees, Court costs, and printing expenses, rendered necessary by their rule of practice, and excluding my personal expenses), to two thousand seven hundred dollars ($2,700).

This sum I paid out of the contingent fund, placed at my disposal; a balance of which remained unexpended on my retirement. That the passage of the Reconstruction Acts, and the consequent rape of the sovereignty of Georgia, presented a *contingency* unanticipated by any, save its unprincipled authors, and that it cried aloud for all possible resistance, no right-minded man will deny.

Having been sustained by the opinion of eminent jurists, as to the practicability of judicial relief in the premises, I am content to stand or fall by the judgment of my Fellow-citizens, regarding the propriety of this expenditure.

The second suit cost the State not one cent.

The smallness of the expenditure in the first is attributable to the public spirit and disinterested patriotism of the Solicitors employed for the State. I take pleasure in testifying in regard to both cases, that the people of Georgia owe a debt of gratitude they can never cancel, to Messrs. Charles O'Conor, Jeremiah S. Black, Robert J. Brent, David Dudley Field, and Edgar Cowan.

When I left the Executive office, I took with me the record of warrants drawn upon the treasury, the book of receipts for them, and other papers therewith connected, and the seal of the Executive Department. It was my purpose to retain these things in my own custody until I should see in the Executive office a rightful incumbent, and then to restore them.

The removal of the books and papers was simply a cautionary measure for my own protection. Not so with the seal. That was a symbol of the Executive authority; and although devoid of intrinsic, material value, was hallowed by a sentiment which forbade its surrender to unauthorized hands. Afterward, while I was in Washington, vainly seeking the interposition of the Supreme Court, a formal written demand was made upon me by Gen. Ruger for a return of these articles, with which I declined to comply. The books and papers I herewith transmit to your Excellency, that they may resume their place among

the archives of the State. With them, I also deliver to you the seal of the Executive Department. I derive high satisfaction from the reflection that it has never been desecrated by the grasp of a military Usurper's hand—never been prostituted to authenticate official misdeeds of an upstart Pretender. Unpolluted as it came to me, I gladly place it in the hands of a worthy son of Georgia—her freely chosen Executive—my first legitimate successor. Anticipating as the fruits of your Administration, distinguished honor to yourself, and lasting benefits to your confiding constituents, I am,

Your Excellency's ob't servant,

C. J. JENKINS.

GENERAL ANALYTICAL INDEX.

THE END.

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